

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

THE STATE OF FLORIDA, et al.,

Plaintiffs,

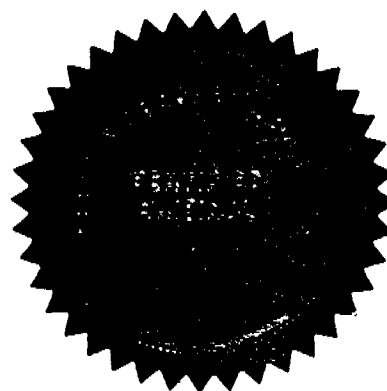
vs.

CASE NO. CL 95-1466 AH

THE AMERICAN TOBACCO COMPANY,
et al.,

Defendants.

COPY



VIDEO DEPOSITION OF: JOHN H. FRENCH
TAKEN AT THE INSTANCE OF: The Plaintiffs
DATE TAKEN: July 22, 1997
LOCATION: 3375 Capital Circle N.E.
Tallahassee, Florida
COMMENCING: 10:10 a.m.
CONCLUDING AT: 12:50 p.m.
REPORTED BY: PEGGY L. OWENS, RMR
Registered Professional
Reporter

Property of: Ness, Motley
Main Pl File Room
Charleston, SC

A P P E A R A N C E S

DAVID FONVIELLE, Attorney at Law, of the law firm of Fonvielle, Hinkle & Lewis, 3375 Capital Circle, N.E., Building A, Tallahassee, Florida 32308; appeared on behalf of the Plaintiffs.

CHARLES J. MIKHAIL and LEE YOUNG, Attorneys at Law, of the law firm of Scruggs, Millette, Lawson, Bozeman & Dent, P.A., 734 Delmas Avenue, Post Office Drawer 1425, Pascagoula, Mississippi, 39568-1425; appeared on behalf of the Plaintiffs.

JERRY HUDSON EVANS, Attorney at Law, of the law firm of Ness, Motley, Loadholt, Richardson & Poole, 151 Meeting Street, Suite 600, Post Office Box 1137, Charleston, South Carolina 29402; appeared on behalf of the Plaintiffs.

STEVEN P. LOCKMAN, Attorney at Law, of the law firm of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C. 20004-1202; appeared on behalf of the Defendants.

D. DAVID KELLER, Attorney at Law, of the law firm of Bunnell, Woulfe & Keller, P.A., 888 East Las Olas Boulevard, Post Office Drawer 030340, Fort Lauderdale, Florida 33303; appeared on behalf of the Defendants.

ALSO PRESENT: KEVIN R. DEYO, Videographer

I N D E X

WITNESSPAGE

JOHN H. FRENCH

Direct Examination by Mr. Mikhail

4

Cross Examination by Mr. Lockman

119

EXHIBITS

No. 1 - Copy of Subpoena

PEGGY OWENS & ASSOCIATES

P O BOX 13502, TALLAHASSEE, FLORIDA 32317 (904) 222-6010

D E P O S I T I O N

Whereupon,

JOHN H. FRENCH

was called as a witness; after having been first duly sworn, was examined and testified as follows:

D I R E C T E X A M I N A T I O N

BY MR. MIKHAIL:

Q Would you state your full name for the record please.

A John H. French, Jr.

Q And where do you live, Mr. French?

A [DELETED]

Q I'm sorry. How long have you lived here?

A I lived in the city of [DELETED] since 1948.

Q You are from Florida originally?

A I was born in North Georgia, but I grew up in [DELETED]

Q Did you graduate from high school in [DELETED]

A Yes.

Q And where did you attend college?

A Florida State University.

Q And what did you major in there?

1 A Political science and history.

2 Q Something in common there then. Did you go
3 to graduate school other than law school?

4 A Not other than law school.. I attended
5 Florida State University College of Law, graduated
6 there in 1971.

7 Q And that's plenty of education, I'm just
8 asking is there any other formal education that you
9 received other than --

10 A No other formal education.

11 Q What did you do after you graduated from law
12 school?

13 A Well, I guess I need to back up a little bit
14 and give you a full employment history.

15 Q That's fine. Please do.

16 A When I was entering law school I went to work
17 for the Attorney General in the State of Florida in a
18 capacity of working in the legislative research
19 office. At that time the Attorney General's office had
20 the responsibility for drafting legislation, things of
21 that nature. And I basically was an editor in that
22 office.

23 That office was subsequently moved over to
24 the legislature. I worked my way through law school
25 almost continuously working for the legislative

1 research and drafting arm of the Florida Legislature.

2 My last semester of law school I was a
3 legislative assistant to then representative Sandy
4 D'Alemberte who is the past president of the ABA --

5 Q I'm familiar with him.

6 A And went on, then when I graduated from law
7 school I became a staff director for the legislature.
8 I was the staff director of the House of
9 Representative's Committee on Elections for two years.

10 Q Okay. And when did you go into private
11 practice?

12 A Well, I went into private practice two years
13 after I left the legislature. I then upon leaving the
14 legislature I spent approximately two years as
15 Executive Director of the Florida Democratic Party.
16 And so I then went into private practice in early to
17 mid 1975.

18 Q Mr. French, when you were Executive Director
19 of the Florida Democratic Party under which governor
20 was that, under which administration?

21 A Governor Askew.

22 Q And what years would that have been?

23 A I was executive director in mid seventy --
24 mid '73 through mid '75. He was governor from 1971
25 through 1978.

1 Q Did you serve in any capacity in the State
2 Democratic Party in an official office or an official
3 capacity while Governor Lawton Chiles was governor of
4 Florida or is governor of Florida?

5 A Not in an official capacity. I served as a
6 volunteer as General Counsel for the State Democratic
7 Party in the area of election law matters which happens
8 to be a rather arcane sub-specialty of mine. They had
9 a rather profound need for someone with that
10 sub-specialty.

11 Q Did you volunteer your time?

12 A It was a volunteer position, entirely pro
13 bono activity.

14 Q How long did you serve in that capacity?

15 A Under the Chiles' administration?

16 Q Yes.

17 A Several years, probably four or five years.
18 It was an ongoing representation, so to speak.

19 Q Okay.

20 A Again it related, to the best of my
21 recollection, exclusively to election law matters,
22 though. There were very, you know, I didn't get into
23 political issues or anything else like that.

24 It is basically how to stay out of jail when
25 you are raising spending campaign money.

1 Q Dealt with election laws?

2 A Dealt with election laws per se, and it was
3 in the capacity as an attorney as opposed to anything
4 else.

5 Q Is the Office of General Counsel an official
6 office?

7 A No. It is not even an office.

8 Q Ad hoc?

9 A -- a title we made up. So we can go in the
10 front of bodies and the like and have a little ring to
11 it.

12 Q Sounded good?

13 A It sounded good, if the truth be known.

14 MR. MIKHAIL: Let me interrupt here. I'm
15 sorry, but did you need us to identify ourselves
16 on the camera for the videotape? I'd hate not to
17 have to do that for the record.

18 THE VIDEOGRAPHER: Since you brought it up
19 you might as well.

20 MR. MIKHAIL: Yeah. David, do you want to go
21 ahead and start?

22 MR. FONVIELLE: I'm David Fonvielle here for
23 the plaintiffs.

24 MR. EVANS: Jerry Evans for the plaintiffs.

25 MR. YOUNG: Lee Young for the plaintiffs.

1 MR. MIKHAIL: Charles Mikhail for the
2 plaintiffs. I've already been identified I
3 think.

4 MR. LOCKMAN: Steve Lockman for Philip Morris
5 and for the witness.

6 MR. KELLER: David Keller for The Tobacco
7 Institute.

8 MR. MIKHAIL: Okay, thank you.

9 BY MR. MIKHAIL:

10 Q You said, Mr. French, that you went into
11 private practice of law two years after you left the
12 legislature; is that right?

13 A Right.

14 Q What year would that have been that you
15 entered into private practice of law?

16 A Mid 1975. I want to say April of 1975.

17 Q Have you been in private practice of law
18 continually since mid 1975?

19 A Yes.

20 Q Where has that practice been?

21 A For the first five years I was a sole
22 practitioner. Then in approximately 1980 I joined a
23 mid-size law firm which at that point was Thompson,
24 Wadsworth, Messer, Fonvielle at one time, David? I
25 don't remember.

1 MR. FONVIELLE: I was there.

2 MR. FRENCH: I think you were leaving just as
3 I was arriving. But it was, as I say, I stayed
4 there for ten years.

5 BY MR. MIKHAIL:

6 Q Did David leave because you joined the firm?

7 A I don't think so.

8 MR. FONVIELLE: It was a condition on joining
9 that I --

10 THE WITNESS: I don't think it had any
11 relationship to it. I stayed there for ten
12 years.

13 BY MR. MIKHAIL:

14 Q Ten years? What happened after that?

15 A At that time I went with a much smaller firm
16 which at that time was Pennington-- no, Haben and
17 Culpepper. A lawyer who had just come off, came out of
18 the legislature and having worked for Governor Martinez
19 joined also. It was Haben, Culpepper, Dunbar &
20 French.

21 About three years into the existence of that
22 small firm we merged with another firm, another medium-
23 sized firm.

24 Q About what year was that, just roughly?

25 A It must be about four years ago or so. It

1 will make it '92, '93, somewhere like that.

2 Q Okay.

3 A Then it became a much bigger firm. And then
4 two years ago they decided -- most lawyers are
5 transients anyway -- that law firm basically blew up as
6 law firms do and several of us left.

7 After a month of trying to decide what I was
8 going to do when I grew up I went with my current law
9 firm which is Bryant, Miller and Olive here in
10 Tallahassee.

11 Q How long has this firm been in existence?

12 A Since the dawn of time. It is a very old law
13 firm.

14 Q You basically merged with the firm or joined?

15 A I joined the firm as a shareholder, yeah, in
16 February of last year.

17 Q Do you have a specialty in your practice
18 right now, Mr. French?

19 A Right now as we exist?

20 Q Yeah, is there a particular area of law that
21 you concentrate on more heavily?

22 A To the extent I have a specialty, yes, it is
23 legislative and governmental affairs kinds of thing. I
24 don't do much day-by-day active law practice anymore,
25 even though I did for several years.

1 Q When you say legislative affairs and
2 governmental practice, what type of cases do you
3 handle?

4 A It is primarily lobbying law.

5 Q Lobbying?

6 A Yes. Like I say, I'm not involved in
7 day-to-day litigation except occasionally active
8 representation of clients in judicial as opposed to
9 legislative environment. So it is primarily lobbying
10 law.

11 Q Do you do any work on behalf of clients in
12 your law practice representing them before governmental
13 agencies or governmental administrative boards or
14 anything like that?

15 A Yes.

16 Q You do? And is that in connection with
17 actions that governmental bodies may be taking that may
18 affect clients of yours?

19 A From time to time.

20 Q All right.

21 A It is also taking it a step further, which is
22 administrative litigation arising out of those
23 decisions, too.

24 I haven't actively been involved in a case
25 for probably 18 months or so in terms of litigating it,

1 taking it the next step, which is often necessary.

2 Q Okay. About how many clients do you have in
3 your, quote, unquote, lobbying practice that you have?
4 Just an estimate.

5 A I personally right now am concentrating my
6 lobbying activities on the behalf of a very few
7 clients. The firm has a broader client base. We
8 interchange. We help one another out.

9 Depending on how an issue evolves, I may be
10 called in to help one of the firm's clients. That's a
11 hard question to answer.

12 Q Can you give me maybe an estimate of how many
13 clients the firm represents in so-called lobbying
14 activities?

15 A Yeah.

16 Q -- or governmental affairs?

17 A Excuse me.

18 Q Let's not talk over each other. You are a
19 lawyer. You know about this. Some people don't. She
20 will have difficulty.

21 First the firm and give me an estimate of how
22 much you personally handled.

23 A Yes. The firm probably represents in front
24 of the legislature -- let's define that as one
25 environment -- in front of the legislature probably ten

1 to a dozen clients ranging in the size from very small
2 to moderately large.

3 In an executive branch environment I couldn't
4 give you a precise number. More than a dozen. But
5 again, a lot of times there is a very fine distinction
6 between, quote, lobbying, and then anticipating
7 litigation. It is a continuum as opposed to two
8 separate phases.

9 Q I see.

10 A So a lot of our litigation clients are also
11 governmental affairs clients and vice versa.

12 Q So at one time you could be doing lobbying
13 activities for them and at one time you could be doing
14 something involving a decision made?

15 A Yes. It is interactive, too.

16 Q Hard to separate?

17 A Very hard to separate.

18 Q You personally, Mr. French, about how many do
19 you have ongoing on a normal --

20 A This last session I was probably active on
21 behalf of no more than five or six clients.

22 Q Okay. Is that normal for you? Is that about
23 the same number every year?

24 A No. It has ranged from as few as three or
25 four to as many as eight or a dozen. It all depends on

1 the year. It all depends on what is on the legislative
2 table. It just depends on a lot of different things.
3 This was a quiet year.

4 Q Currently the most recent year it has been
5 about five or six?

6 A Five or six, yes.

7 Q All right. I understand that you are a
8 lobbyist now for Philip Morris; is that correct?

9 A That's correct.

10 Q And I also understand that you are a contract
11 lobbyist for Philip Morris, and that you are not an
12 employee of Philip Morris; is that correct?

13 A That's correct.

14 Q And how long have you been a contract
15 lobbyist for Philip Morris?

16 A I believe that this, I believe that my first
17 year was 1986. And that's plus or minus one year, so
18 make it 11 years.

19 Q Okay. During that 11 years was there a time
20 period -- I gather from the way you answered the
21 question that perhaps you were not a lobbyist for
22 Philip Morris?

23 A It has been continuous for the last 11 years.

24 Q It has been continuous?

25 A Yes.

1 Q Have all these years since roughly 1986 been
2 as a contract lobbyist?

3 A Yes.

4 Q You've never been an official employee of the
5 company?

6 A No.

7 Q All right. And in all those years have you
8 been a registered lobbyist for Philip Morris?

9 A To the best of my recollection, yeah.

10 Q So to the best of your recollection you have
11 registered the required forms --

12 A Uh-huh.

13 Q -- with the State to be a registered lobbyist
14 for Philip Morris?

15 A Yeah.

16 Q All right.

17 A Philip Morris, as you well know, is a very
18 complex company with a lot of different subsidiaries.
19 The name of the entity for whom we have registered has
20 changed from year to year.

21 Like one year it will be Philip Morris USA,
22 and the next year it will be Philip Morris Management
23 Company or something. I don't understand the internals
24 within Philip Morris of who registers for whom. All I
25 know is it says Philip Morris on my contract.

1 Q Have you been a registered lobbyist for
2 Philip Morris the parent company, the holding company
3 in Florida during those years at any time?

4 A I honestly couldn't tell you. Like I say
5 we've been through so many different permutations in
6 registration. I honestly don't know.

7 Q Would you --

8 MR. MIKHAIL: Steve, I would like to request
9 if you are ever a registered lobbyist for the
10 holding company Philip Morris -- I think it is
11 Philip Morris Companies, Inc.; isn't that right?

12 MR. LOCKMAN: Yes.

13 MR. MIKHAIL: That you would supplement the
14 deposition by letting me know that is the case.

15 BY MR. MIKHAIL:

16 Q If at anytime during those 11 years you were
17 actually a lobbyist for the parent company Philip
18 Morris USA, I think.

19 A I will tell you now I really doubt I ever
20 was. I think most of the time it was for Philip Morris
21 USA.

22 I just recall in the last two or three years
23 there has been, I think one year we registered for
24 management or for someone like that. But I don't
25 recall, nor do I think we ever registered for the

1 holding company. But I'm not willing to say that to a
2 moral certainty.

3 Q Certainly. I understand that. That's fair
4 enough. I would like to ask if you would check and let
5 me know.

6 MR. LOCKMAN: We will check.

7 MR. MIKHAIL: That answer would be part of
8 the deposition testimony. I would like to make
9 sure we have that. You don't have any objections,
10 do you?

11 MR. LOCKMAN: No.

12 BY MR. MIKHAIL:

13 Q During that 11-year period were you ever a
14 registered lobbyist for any other company, any other
15 cigarette manufacturer other than Philip Morris?

16 A No other cigarette manufacturer.

17 Q Were you a registered lobbyist for The
18 Tobacco Institute during any of those years?

19 A I don't recall, because during the last three
20 years when we were working on an effort that is not
21 directly related to why we are here today some of us
22 registered for The Tobacco Institute, some of us
23 registered for Covington & Burling in addition to our
24 Philip Morris registration.

25 I just don't recall which one I actually

1 registered for. We went back and forth in terms of
2 what we were going to do. I signed the piece of paper
3 with whatever we agreed to.

4 Q Today you are not prepared to tell me whether
5 or not you have been a registered lobbyist for anyone
6 other than Philip Morris?

7 A To the best of my knowledge, to the best of
8 my recollection we registered on behalf of Covington &
9 Burling. There was discussion about registering on
10 behalf of The Tobacco Institute. I don't recall which
11 way it finally spun out because we are talking about
12 three different sessions of the legislature here.

13 I don't recall having registered for T.I. I
14 think it was Covington & Burling; but again, we will go
15 back and look and supplement the record for you.

16 Q I would like for you to do that. We can do
17 it by letter form and we will just have an
18 understanding it will be part of the deposition.

19 A Sure.

20 Q Another question in that regard --

21 MR. KELLER: Excuse me. I would like to
22 reserve any objections T.I. may have to that
23 particular -- a privilege objection if there are
24 any. I don't want my silence to be construed as
25 some sort of a waiver.

1 BY MR. MIKHAIL:

2 Q Mr. French, why would there be a registered
3 lobbyist for a law firm, Covington & Burling; do you
4 know?

5 MR. KELLER: Object to the form.

6 BY MR. MIKHAIL:

7 Q In other words, rather than for a business
8 entity or a company.

9 A We have a little problem here. It is my
10 understanding that activities relating to the repeal of
11 the third-party liability act are out of bounds as far
12 as this deposition today; is that correct?

13 Q I'm not asking you about that. I'm simply
14 asking --

15 A Well, this is part and parcel of that
16 activity.

17 Q You mean when you --

18 A Yes.

19 Q When you, if you were registered for --

20 A Yes. It was, it was --

21 MR. LOCKMAN: That's a matter he was
22 referring to when he said the matter we are not
23 here for --

24 THE WITNESS: It was solely -- I was trying
25 to be a little oblique and try to give you a heads

1 up so you didn't make me come out and say this.

2 MR. LOCKMAN: Why don't we leave that aside.

3 THE WITNESS: Whatever representation I may
4 have done for either T.I. or Covington & Burling
5 was exclusively and solely related to the repeal
6 effort.

7 BY MR. MIKHAIL:

8 Q But other than the repeal effort, set that
9 aside.

10 A Other than that I have not at any time to the
11 best of my recollection registered for either T.I. or
12 anyone else in the tobacco industry other than Philip
13 Morris or which ever Philip Morris subsidiary we are
14 talking about.

15 Q All right. From your experience as a lobbyist
16 -- and I'm not asking specifically about the repeal or
17 the third party liability act -- from your experience
18 as a lobbyist, and obviously you have experience in
19 governmental affairs and legislative affairs, is it
20 unusual for someone who acts as a lobbyist to register
21 as a lobbyist for a law firm as opposed to --

22 A No.

23 Q -- to a company?

24 MR. LOCKMAN: Wait. You are in the
25 prohibited area.

1 MR. MIKHAIL: What's that?

2 MR. LOCKMAN: Well, you are asking him about
3 something that might bear on what he did or didn't
4 do in connection with the repeal.

5 MR. MIKHAIL: I'm not going to ask him about
6 what he did about it, Steve. I'm simply trying to
7 find out from his experience as a registered
8 lobbyist who he --

9 MR. LOCKMAN: The only --

10 MR. MIKHAIL: Let me finish. Who registers
11 as lobbyists for what type of entities. And I
12 want to ask if it is unusual for someone to
13 register as a lobbyist for a law firm as opposed
14 to the client of a law firm.

15 MR. LOCKMAN: I think that is covered by the
16 stipulation.

17 MR. MIKHAIL: Are you instructing him not to
18 answer?

19 MR. LOCKMAN: Yeah. I mean if you show me it
20 is not covered, fine. I certainly don't want to
21 obstruct him. You know me to have been in enough
22 depositions to know that's the case.

23 I think this really focuses on the repeal
24 effort and what arrangements were or weren't made
25 and whether they were or were not unusual. And I

1 think that's out of bounds. So...

2 MR. KELLER: I join in that objection. And
3 add to it that this may involve privileged
4 information, but I don't know that because I don't
5 know what the answer is.

6 MR. MIKHAIL: Okay. Without belaboring the
7 point, and I don't want to quarrel with you,
8 Steve, I think it is your burden if he is going to
9 not answer a question in general terms like that,
10 to tell me in this stipulation where it is covered
11 where he cannot answer a general question about
12 what type of entities lobbyists register for if he
13 is being put forward as a lobbyist.

14 That's the general question. And I would
15 like to understand it.

16 MR. LOCKMAN: That question only bears on
17 what his relationship might or might not have been
18 in connection with the repeal. He has told you
19 that outside of the repeal he has never registered
20 for anybody other than a Philip Morris entity.

21 MR. MIKHAIL: Well, he talked about --

22 MR. LOCKMAN: In connection with tobacco
23 outside of the repeal effort. So that's the
24 permitted area.

25 MR. MIKHAIL: I will ask the question.

1 MR. LOCKMAN: That question doesn't come up
2 in the permitted area.

3 MR. MIKHAIL: I am going to ask you if you
4 would to let me know how you believe this
5 stipulation --

6 MR. LOCKMAN: I will look at it at a break.
7 I won't study the order right now. If I decide
8 I'm wrong I will let him answer the question
9 before the deposition is over.

10 MR. MIKHAIL: I do want to ask the question
11 in a different way and see if --

12 MR. LOCKMAN: All right.

13 MR. MIKHAIL: -- we can get anywhere with it;
14 if not, we will take this up at a break and we
15 will come back to it.

16 MR. LOCKMAN: Right.

17 BY MR. MIKHAIL:

18 Q Mr. French, in your experience and knowledge
19 in governmental affairs and as a lobbyist do law firms
20 hire lobbyists in Florida?

21 MR. KELLER: Object to the form.

22 MR. LOCKMAN: Same question. Same, let's
23 just treat that question along with this one.

24 MR. MIKHAIL: You are instructing him for now
25 not to answer?

1 MR. LOCKMAN: For now subject to me taking a
2 look at the order that you've given me and
3 considering it further.

4 BY MR. MIKHAIL:

5 Q All right. Have you ever registered for a,
6 as a lobbyist for a law firm having nothing to do with
7 tobacco?

8 A Yes.

9 Q For law firms in Florida?

10 A Yes.

11 Q Have you registered as a lobbyist for law
12 firms outside of the State of Florida for lobbying
13 activity in Florida other than on tobacco?

14 A Not that I recall. You realize now you are
15 talking about a 21-session career --

16 Q I understand.

17 A -- where I've probably registered for maybe
18 as many as 100 to 150 clients over the course of that
19 time. So to the best of my recollection, no.

20 Q Okay. And is it unusual for a lobbyist to
21 register on behalf of a law firm?

22 MR. LOCKMAN: Is that the same question?

23 MR. MIKHAIL: Just a minute. He said he's
24 registered as a lobbyist for other law firms.

25 MR. LOCKMAN: That's a different question and

1 you asked it properly and I didn't object.

2 MR. MIKHAIL: On non-tobacco matters. Your
3 concern is tobacco matters.

4 THE WITNESS: You asked me what I did as
5 opposed --

6 BY MR. MIKHAIL:

7 Q Right, what you did.

8 A -- to opinion, which means I guess you think
9 I'm an expert, so I will start the clock. Is that what
10 we are doing?

11 Q No.

12 A I mean --

13 Q Is it common for lobbyists to register as
14 lobbyists for law firms, Mr. French?

15 A It is not uncommon. You originally said
16 unusual. The answer to that question is, no, it is not
17 unusual. It is not common.

18 Q It is not common, but it is not unusual?

19 A Right.

20 Q Is there a reason, can you explain to me is
21 there a reason why a lobbyist would register for a law
22 firm as opposed to the client of a law firm?

23 MR. KELLER: Object to the form.

24 THE WITNESS: Excuse me. I think that varies
25 from situation to situation. So I don't think

1 there is any one reason. I think it is a matter
2 of convenience. It is a matter of a lot of
3 different things.

4 BY MR. MIKHAIL:

5 Q Are you able, just briefly, are you able to
6 tell me what just the criteria are when you would
7 register for the law firm as opposed to register for
8 the client of a law firm?

9 A Well, I think it depends on the nature of the
10 representation. There are obviously people who have
11 registered to lobby for law firms.

12 You know, as you well know the law firms
13 which are the conglomerate that's representing the
14 State have hired lobbyists to represent their interests
15 before the legislature. So there are times that law
16 firms have their own need to hire lobbyists for their
17 own purposes. There are other instances like that.

18 My law firm, for example, does bond work.
19 And there are from time to time, there are issues
20 before the legislature that relates to bonding that we
21 would like to see passed because it creates a bigger
22 pool of money for law firms to do bonds work.

23 So there are instances like that. Each one
24 has its own story to tell. There is no --

25 Q I understand.

1 A I'm not going to give you a tin plate kind of
2 answer to a rifle shot kind of issue.

3 Q I understand, Mr. French. But let me ask you
4 this on this subject --

5 A Sure.

6 Q -- and we will try to move along to something
7 else. Is one of the reasons from your experience in
8 non-tobacco matters registering as a lobbyist for a law
9 firm as opposed to the client of a law firm is one of
10 the criteria or one of the circumstances that may lead
11 to that client desiring anonymity or anything like
12 that?

13 A Not that I have ever been aware of.

14 Q You've never been told that by the law firm?

15 A I've never been told that. I've never seen
16 that happenstance -- from my own personal knowledge.

17 Q Right. Have you asked when you have been
18 registered as a lobbyist for a law firm as opposed to a
19 client of a law firm why that was, why you were
20 registering it for the firm as opposed to the client of
21 the firm? Have you ever --

22 MR. LOCKMAN: Non-tobacco?

23 BY MR. MIKHAIL:

24 Q Non-tobacco.

25 A It has been apparent to me at the time.

1 Q What was apparent to you?

2 A What the purpose of the representation was.

3 Q What was that?

4 A To represent the interest of the law firm as
5 opposed to a client.

6 Q But you have registered for a law firm that
7 was representing a client?

8 A No. I represented, I registered for my own
9 law firm, for example.

10 Q Right.

11 A Representing the law firm like on bond issues
12 and the like. I don't recall, again going back over
13 several years, I don't recall ever registering for
14 another law firm.

15 Again you have merged what you know about
16 what everybody else does as opposed to what I have
17 done. What I've done is registered for my own law
18 firm.

19 There are law firms in one or two different
20 lines that represent their interests before the
21 legislature, but never to represent the interest of a
22 client that was using the law firm as a proxy.

23 Q In tobacco matters -- and I know this may be
24 covered under the stipulation, but I do want to ask the
25 question on the record. In tobacco matters any

1 registration that you may have had or representation as
2 a lobbyist for Covington & Burling would not have been
3 for the law firm of Covington & Burling; isn't that
4 correct?

5 MR. KELLER: Object to the form.

6 BY MR. MIKHAIL:

7 Q As you have for law firms in non-tobacco
8 matters; is that correct?

9 MR. LOCKMAN: I object to the form of the
10 question. I don't understand what you are getting
11 at. Maybe the witness does.

12 BY MR. MIKHAIL:

13 Q Well, in representing tobacco matters,
14 tobacco interests, if when you registered as a lobbyist
15 for Covington & Burling, is it fair to say you were not
16 representing the interests of the law firm of Covington
17 & Burling?

18 MR. LOCKMAN: If this just, in fact, relates
19 to a matter that may have occurred or did occur in
20 connection with the repeal effort of the '94 act
21 you should not answer.

22 MR. KELLER: Excuse me. I object to the form
23 and also to the extent that there is a privilege
24 involved. You may consider that Mr. French.

25 THE WITNESS: It's a matter of public record

1 that I registered for Covington & Burling. Any
2 representation of Covington & Burling or anything
3 that happened vis-a-vis Covington & Burling was
4 exclusively, exclusively related to the 1993 --
5 the repeal effort of the 1994 law. There have
6 been no peripheral issues, no side issues. It was
7 exclusive.

8 BY MR. MIKHAIL:

9 Q Did the law have anything to do with
10 Covington & Burling, the law firm of Covington &
11 Burling?

12 MR. KELLER: Object to the form.

13 MR. LOCKMAN: Object to the form. Did you
14 mean the law?

15 BY MR. MIKHAIL:

16 Q Did the law in any way have any effect or
17 impact on Covington & Burling itself as a law firm?

18 MR. KELLER: Object to the form.

19 THE WITNESS: He is also asking me for a
20 legal conclusion.

21 MR. MIKHAIL: Well, try to answer the
22 question if you can.

23 MR. LOCKMAN: Well, Charles, come on. This
24 is the '94 act. He told you that. Come on, you
25 have two hours.

1 MR. MIKHAIL: I understand the stipulation.

2 MR. LOCKMAN: Here it is signed.

3 MR. MIKHAIL: But I think you've gone beyond
4 the stipulation --

5 MR. LOCKMAN: Actually the question I
6 objected to before has been answered.

7 MR. MIKHAIL: -- to block a legitimate
8 question.

9 MR. LOCKMAN: I haven't blocked anything
10 because these questions have been answered. You
11 are staying within the '94 act. I don't understand
12 why.

13 MR. MIKHAIL: I will ask the question again.

14 MR. LOCKMAN: You got a three-page letter
15 from Mr. Gentry the other day to the effect that
16 they still wanted to proceed with that deal. So
17 we agreed with it. We signed the stipulations
18 right here. Why are you staying inside the '94
19 act?

20 BY MR. MIKHAIL:

21 Q You are saying that registration for
22 Covington & Burling was in connection with matters
23 involving tobacco; correct?

24 MR. KELLER: Objection.

25 THE WITNESS: No.

1 MR. KELLER: That's repetitious and
2 argumentative. He said it two or three times.

3 MR. MIKHAIL: Argumentative? He is on cross
4 examination.

5 THE WITNESS: Let me make sure to try to say
6 this as concisely and accurately as I can.

7 BY MR. MIKHAIL:

8 Q Okay.

9 A My registration and representation of
10 Covington & Burling at all times related exclusively to
11 activities dealing with the repeal of the 1994 act.

12 Q That's fair enough.

13 A Period.

14 Q That's fair enough.

15 MR. LOCKMAN: Very good. That's what I was
16 trying to say.

17 MR. MIKHAIL: You had a hard time saying it,
18 Steve.

19 THE WITNESS: I said it three times.

20 BY MR. MIKHAIL:

21 Q Not quite that way, but that's all right.

22 A Let's go back and look sometime.

23 Q That's all right.

24 MR. LOCKMAN: All right.

25 BY MR. MIKHAIL:

1 Q Currently do you represent any other tobacco
2 interests other than Philip Morris?

3 A No.

4 Q When you were hired as a lobbyist for Philip
5 Morris back in 1986 did you reach an agreement or
6 understanding with them about the compensation that you
7 were to receive?

8 A Yes.

9 Q And did you have a contract with Philip
10 Morris?

11 A Yes.

12 Q Was that for a set fee or a fixed fee for
13 your services?

14 A Yes.

15 Q And do you remember what the amount was for
16 1986, the first year that you worked for them?

17 A I don't know precisely.

18 Q Do you remember an approximate.

19 A Yes.

20 Q How much was that?

21 MR. LOCKMAN: Don't answer, please. I think
22 as it was discussed yesterday, there apparently has
23 been ruling on this issue or at least that bears
24 on this issue. And I take it that ruling means
25 that the witness does not have to answer that

1 question --

2 MR. MIKHAIL: But he can --

3 MR. LOCKMAN: -- in a deposition.

4 MR. MIKHAIL: -- if he wants to.

5 THE WITNESS: He doesn't want to.

6 MR. LOCKMAN: He doesn't want to, I don't
7 think.

8 THE WITNESS: Secondly, a privilege I would
9 assert is that as I recall Article I Section 26 of
10 the Florida Constitution, a citizen has the right
11 to be left alone by government. You are
12 government. I'm a citizen. The courts have said
13 that right is mine in the absence of a compelling
14 public interest to the contrary.

15 BY MR. MIKHAIL:

16 Q You are not going to tell me how much you
17 were paid?

18 A No.

19 Q Are you going to tell me how much you are
20 being paid currently?

21 A No, sir. I'm asserting that same right to
22 privacy under the Florida Constitution.

23 Q And your counsel --

24 MR. MIKHAIL: I understand, Steve, you are
25 representing him personally, as well --

1 MR. LOCKMAN: Correct.

2 MR. MIKHAIL: -- in addition to Philip
3 Morris?

4 MR. LOCKMAN: That's right.

5 MR. MIKHAIL: In line with the representation
6 made to the judge in this case, aside and separate
7 and apart from the deposition would you furnish us
8 that information in a separate letter aside from
9 the deposition?

10 MR. LOCKMAN: Well, let me say -- no, I'm not
11 going to make that commitment now. I don't know
12 what representation was made. I don't know if it
13 was made on Philip Morris' behalf. And the
14 witness has rights of his own that he wants
15 asserted here.

16 And so, no, I'm not going to make that
17 commitment. We are going to have to consider this
18 after the meeting, after the deposition. We may
19 have a problem and you may have to go to Special
20 Master Rutter. I understand that.

21 MR. MIKHAIL: I'm formally making the
22 request.

23 MR. LOCKMAN: Okay.

24 MR. MIKHAIL: For both you, Mr. French, and
25 from Philip Morris. I would ask you to take that

1 under consideration.

2 MR. LOCKMAN: Exactly. That's where we will
3 leave it for now.

4 THE WITNESS: Sure.

5 BY MR. MIKHAIL:

6 Q My understanding of the law in Florida, Mr.
7 French, correct me if I'm mistaken, but I think it is
8 correct that lobbyists don't have to report the amount
9 of money they receive from clients for whom they are
10 registered; is that correct?

11 A As compensation, that's correct.

12 Q Right, as compensation.

13 A Yes.

14 Q Do they have to report any bonuses or any
15 money over and above the contract fee over and above
16 the retainer?

17 A No. However, any bonuses that are any way
18 contingent or anything other than either contractual or
19 gratuitous are not allowed in the State of Florida.

20 Q They are not allowed?

21 A They are not allowed in the State of
22 Florida.

23 Q I guess this begs the question, but in the
24 event they were paid are they required to be reported?

25 A No.

1 Q I mean gambling is required to be reported
2 even though it is illegal?

3 A I think the law has changed. The
4 no-contingency fee provision was put in in 1991 or '92
5 and I know it has been that way.

6 Q All right. And you haven't received anything
7 over and above the contract fee; is that correct?

8 A I have not received anything that is not
9 either called for -- that is not called for by the
10 contract or the, was not subject to like a renegotiated
11 contract, for lack of a better phrase.

12 Q Okay.

13 A But no, I have not received anything that is
14 outside the prohibition of the statute.

15 Q Okay. All right. How did it come about that
16 you became a lobbyist for Philip Morris in '86? Do you
17 remember the circumstances that led to you becoming a
18 lobbyist for Philip Morris?

19 A Not precisely. Actually, one of my former
20 partners and I were contacted by a fellow named Carl
21 Johnson who at that time was the regional director for
22 governmental affairs for Philip Morris for the
23 southeast region about becoming a lobbyist for Philip
24 Morris.

25 I don't recall exactly how he came about our

1 name. All I remember is he tracked us down and we
2 interviewed, and signed us up.

3 Q And when he approached you did he tell you
4 whether or not he was approaching you on behalf of
5 Philip Morris or --

6 A Yeah. He indicated he was. He was an
7 employee of Philip Morris attempting to retain us as
8 legislative consultants for Philip Morris.

9 Q Okay.

10 A That was clear at all times.

11 Q Okay. Let me hand you what has been marked
12 as Exhibit 1 which is a copy of the subpoena that you
13 received. I'm sure you recognize it.

14 MR. MIKHAIL: But, Steve, I only have this
15 copy with me that was faxed to me.

16 MR. LOCKMAN: Sure. That's okay.

17 BY MR. MIKHAIL:

18 Q You recognize this, don't you, Mr. French?

19 A I recognize this.

20 Q Okay. You see here in the subpoena it
21 requests that you produce all documents-- I am reading
22 from Exhibit 1 -- all documents related to your
23 lobbying activities on behalf of or in any way relating
24 to the tobacco industry or relating to tobacco use in
25 the State of Florida.

1 Do you recall seeing that in the subpoena?

2 A I recall seeing that.

3 Q Have you brought with you the documents that
4 are described in this subpoena?

5 A Yes sir.

6 Q Are you going to produce them to us in
7 compliance with the subpoena?

8 A Yes, sir. With the understanding again I
9 have been instructed that items relating exclusively to
10 the 1994 repeal were off limits for this deposition.

11 I have one document in my office that relates
12 exclusively to that effort, but I was told that --

13 MR. LOCKMAN: Which we have not brought with
14 us.

15 THE WITNESS: -- which we have not brought
16 with us. But, yes, to the extent that changes I
17 will furnish you that document as a document that
18 is a matter of public record because we handed it
19 out to the legislature.

20 BY MR. MIKHAIL:

21 Q Only one document that concerns areas that --

22 MR. LOCKMAN: The '94 act.

23 THE WITNESS: That are in my possession --

24 MR. MIKHAIL: -- that we are not getting into
25 or you are not permitting him to get into.

1 THE WITNESS: That's correct.

2 BY MR. MIKHAIL:

3 Q What about all other matters? Are there any
4 other documents?

5 A Yes, sir. The only thing that I have is a,
6 that I kept for purposes of nostalgia is a copy of the
7 information that the industry provides to retailers to
8 try to head off youth usage is the only thing I kept.
9 I don't keep a lot.

10 Q That box you brought in only has the "We
11 Card" kit?

12 A The "We Card" kit in its entirety. I didn't
13 even open it until this morning.

14 Q Is there anything in it that is different
15 from the regular -- or you wouldn't know, would you?

16 A That is a regular kit to the best of my
17 knowledge. I didn't check it for completeness, you
18 know. There is no paper snakes hidden up under there
19 or anything.

20 Q Are you familiar with the "We Card" program?

21 A Just in general terms.

22 Q Do you know what type of information is
23 relayed to people in the "We Card" program?

24 A In terms of the contents of that kit --

25 Q Yeah.

1 A -- I'm generally familiar. I used that kit
2 in conjunction with some legislative testimony this
3 year. So I kind of went through on a summary and
4 cursory basis in order to see the big pieces. I didn't
5 go through and read all the material line by line or
6 anything like that.

7 Q But you have examined it, if not in great
8 detail --

9 A I'm aware of what's in there on a general
10 basis, Yeah. I have not -- again, I couldn't tell you
11 about a given brochure -- I know there is a videotape
12 in there. I've never watched the videotape.

13 I know enough that I could stand up in front
14 of a committee and say, look here is a calendar that if
15 you were born after so and so you can't buy
16 cigarettes.

17 Just a very cursory examination.

18 Q What was the purpose of the "We Card"
19 program? From your capacity as a lobbyist for Philip
20 Morris could you tell us what is the purpose of the "We
21 Card" program?

22 A I can tell you my understanding of it.

23 Q Fine, that's fine.

24 A My understanding of it is to provide
25 retailers with the tools and resources from both a

1 perspective to identify underaged smokers and to keep
2 them from buying cigarettes.

3 Q Is there anything in the "We Card" material,
4 to your knowledge, from whatever examination you have
5 made --

6 A Right.

7 Q -- of that material, is there anything that
8 informs either the store owners or underaged
9 individuals about the health consequences of tobacco?

10 A I have not seen anything like that in those
11 materials, based on what I have seen, a very cursory
12 basis.

13 Q From what you've seen and from what you can
14 testify to today you don't recall seeing anything about
15 saying tobacco, children should not or minors should
16 not use tobacco because it is dangerous to your health,
17 and it causes lung cancer or emphysema or anything like
18 that; is that right?

19 A I think I already answered that.

20 Q You saw nothing like that?

21 A I already answered that.

22 Q Have you in your capacity as a lobbyist for
23 Philip Morris ever seen any material furnished by
24 Philip Morris to you that says that tobacco products,
25 Philip Morris products, are hazardous to human health?

1 A Not in those terms.

2 Q What have you seen?

3 A I have seen materials that said that smoking
4 is a well-known risk factor for a number of human
5 health-related diseases. But there may have been a
6 litany of the diseases, I have no recollection of
7 that. But I think that is basically what I have seen.

8 Q But it dealt or it was talking in the context
9 of it being a risk factor or risky behavior as opposed
10 to saying it is harmful?

11 MR. LOCKMAN: Object to the form.

12 BY MR. MIKHAIL:

13 Q Let me ask it another way.

14 A Yeah.

15 Q Have you seen anything in the material that
16 says, Philip Morris material, that says that tobacco or
17 Philip Morris products cause cancer, cause lung cancer?

18 A I've never seen that in any of the material.

19 Q Or cause heart disease or emphysema?

20 A I've never seen that in the material.

21 Q Have you seen it in material of any other
22 tobacco entities that you are familiar with?

23 A Yes.

24 Q From other companies is what I'm asking?

25 A Uh-huh.

1 Q Have you seen any material from other
2 companies that say that tobacco causes lung cancer?

3 A Yes.

4 Q From other tobacco companies?

5 A I guess Liggett is a tobacco company.

6 Q Other than Liggett, aside from Liggett.

7 A Excuse me. Other than Liggett, no.

8 Q What about The Tobacco Institute? Have you
9 seen any material of theirs that says tobacco causes
10 cancer?

11 A No.

12 Q Causes lung cancer?

13 A (Shaking head.)

14 MR. KELLER: Object to the form.

15 BY MR. MIKHAIL:

16 Q Or any other diseases?

17 A Causes, no.

18 Q All right. Isn't it true, Mr. French, that
19 the material furnished by Philip Morris to you as a
20 lobbyist, and in turn if you furnish it to legislators
21 or anyone else as it relates to minor's use of tobacco
22 focuses on the fact that smoking is an adult custom and
23 not for children; isn't that correct? Is that a fair
24 statement?

25 A That's a fair statement.

1 Q There is nothing there about that minors
2 shouldn't smoke because it is harmful. It is simply
3 because it is an adult custom; isn't that right?

4 A I don't recall that. Like I say, I have
5 looked at those materials over the years. I think your
6 first statement as far as the thrust of the material,
7 smoking is an adult choice is true.

8 As far as the extent at which there may have
9 been mentions in there about risk factors and the like
10 I have no recollection whatsoever. I just couldn't
11 tell you one way or another.

12 Q Do you recall seeing any material from Philip
13 Morris that says that children shouldn't smoke because
14 it is harmful to them?

15 A I don't recall seeing materials like that.

16 Q Is it fair to say that you've never furnished
17 any legislators with such material from Philip Morris?

18 A Not necessarily, because I don't recall if I
19 seen the materials. So I could have had some and given
20 them to a legislator and have no recollection. I have
21 no conscious recollection of having seen or furnished.
22 That doesn't mean I didn't.

23 Q Now, you have lobbied the legislature in
24 Florida on behalf of Philip Morris on legislation or
25 the issues that affect minors use of tobacco, haven't

1 you?

2 A That's correct.

3 Q And when you lobbied the legislature did the
4 issue of the health consequences or was the issue of
5 the health consequences of Philip Morris products on
6 minors discussed between you and legislators?

7 A Yes, in the broader context of the health
8 consequences of products on the population at large.
9 Minors being a subset of population at large.

10 Q In what sense?

11 A Well, minors are people. I mean we would
12 discuss the health consequences of the product on
13 people who utilize the product, whether those people
14 were under or over the age of 18, I guess is the point
15 I'm trying to make.

16 Q So you have discussed with legislators as you
17 lobbied for Philip Morris about the health consequences
18 of tobacco products?

19 A Yes.

20 Q And what was the nature of those
21 discussions?

22 A The nature of those discussions again was
23 that smoking is a known risk factor for a number of
24 different disease conditions.

25 Q Was that information provided by you to

1 Q Was that information provided by you to
2 legislators on a voluntary basis? Did you initiate the
3 discussion of the risk factor of tobacco products or
4 would they ask you about it?

5 A See, remember we are talking about 11 years
6 here. There have been times that I recall initiating
7 that piece of the discussion. There have been times
8 that I discussed it. I answered in response to
9 questions.

10 I think, though, the broader point here is
11 that I think you will find in the Florida Legislature
12 that there is a conventional wisdom that smoking is not
13 good for you. I mean smoking is not good for you. You
14 can take that wherever you want to in terms of the
15 degree. Smoking isn't good for you.

16 That's an assumption that underlines their
17 policy-making deliberations. They don't need for us to
18 come in and say smoking is a known risk factor. They
19 know that already, you know.

20 So then they say how then do we take this
21 underlying assumption and apply that against all the
22 other public policy considerations and all the other
23 pulls and tugs of a democracy in order to find the kind
24 of balance we need.

25 So that's a given within the legislative

1 Q What about Philip Morris, Mr. French? Does
2 Philip Morris believe that tobacco is not good for
3 you?

4 A I don't think I can speak for Philip Morris.
5 I can just tell you what I know and what I've heard.
6 What I know and what I've heard is back at the last
7 time I discussed this or heard anything from Philip
8 Morris cigarette smoking is a known risk factor for a
9 variety of diseases. That, you know, that is the
10 extent of my knowledge.

11 Q All right. You have never heard Philip
12 Morris say to you, and you've never told any
13 legislators as a lobbyist for Philip Morris that
14 tobacco causes disease, only that it is a risk factor;
15 is that fair?

16 A Yes, that's fair.

17 Q Do you want to take a five minute break?

18 A Whenever you are ready, sir.

19 MR. MIKHAIL: Let's take a five minute break.
20 I want to move into another area. This is a good
21 breaking point.

22 (Brief recess.)

23 BY MR. MIKHAIL:

24 Q Mr. French, we talked a little bit about this
25 before the break, but I do want to ask you a few more

1 from a scientific and medical standpoint a serious or
2 reasonable question out there from a scientific and
3 medical standpoint about whether or not tobacco use
4 causes lung cancer?

5 MR. LOCKMAN: Are you asking him for a
6 personal opinion?

7 MR. MIKHAIL: Yes.

8 MR. LOCKMAN: Just personal opinion?

9 BY MR. MIKHAIL:

10 Q Personal opinion first. What is your personal
11 opinion?

12 MR. LOCKMAN: If he cares to offer a personal
13 opinion --

14 MR. KELLER: Object.

15 MR. LOCKMAN: -- he can.

16 MR. MIKHAIL: Obviously.

17 MR. LOCKMAN: He doesn't have to.

18 BY MR. MIKHAIL:

19 Q Obviously.

20 A Within the context of your question, which
21 was very constrained in terms of medical, scientific, I
22 think that there is still some doubt in my mind as to
23 whether or not cigarettes cause, per se, whether or not
24 you can show a direct chemical, physiological causal
25 link between cancer, for instance, and smoking, I think

1 the extrinsic evidence, the epidemiological evidence
2 and the extrinsic evidence indicates a fairly strong
3 linkage.

4 But as far as the scientific study of
5 knowledge that goes from step A to step Z with no
6 letters left out, I have not yet seen that. I think
7 the person that sees that on cancer in general will
8 have the Nobel Prize hanging on their wall.

9 Q You are saying from your understanding, again
10 from your personal understanding about the science and
11 the medicine is that the actual mechanism has not been
12 discovered; is that correct?

13 A That's correct. And as an attorney to me
14 causation means the mechanism. It is the direct chain
15 of events that gets you from A to Z. And that's what
16 causation means in the context in which I'm using it.

17 Q Okay. Let me ask you this.

18 MR. LOCKMAN: These are all personal
19 opinions.

20 THE WITNESS: Personal opinions.

21 MR. LOCKMAN: And labeled as such.

22 MR. MIKHAIL: I'm going personal opinions
23 first and then I'm going to ask him as a
24 lobbyist.

25 BY MR. MIKHAIL:

1 Q I'm sorry, did I kick your foot?

2 A I think I kicked you, I'm sorry.

3 Q Is it fair to say or is another way of saying
4 this we are talking about from like a molecular biology
5 standpoint, not from a consensus or general
6 understanding of cause and effect?

7 A From a --

8 MR. LOCKMAN: Object to form. Also, we are
9 still in the personal opinion.

10 MR. MIKHAIL: We are, Steve.

11 THE WITNESS: I also believe from a
12 physiological purely scientific molecular biology,
13 if that's where you are -- you've gone past my
14 knowledge on that point of view -- there are some
15 missing links in the chain of proof so to speak.

16 I think in terms of conventional wisdom and
17 so forth, I think the indications are very
18 strong. Taking that a step further, what I
19 believe -- I won't say it is the state of the
20 times -- but my own personal reading leads me to
21 believe that people are born with genetic
22 predispositions to certain types of diseases, and
23 that there may be some kind of an environmental
24 trigger -- whether it is cigarettes or brussel
25 sprouts or Kentucky Fried Chicken or ozone layer,

1 the ozone layer or something like that, that will
2 trigger that genetic predisposition and cause
3 cells to mutate into cancer. I think that is one
4 way.

5 The second, the counter to that argument is
6 there is something inherent in certain kinds of
7 things that cause those cells to mutate regardless
8 of genetic predisposition. I don't know what the
9 right answer is.

10 BY MR. MIKHAIL:

11 Q From a personal standpoint again do you
12 believe that absent this mechanism, absent this exact
13 mechanism, do you believe that there is a serious
14 question or serious controversy in the scientific and
15 medical community about tobacco causing lung cancer and
16 other diseases?

17 A By itself, as being the exclusive causal
18 agent in the absence of any other environmental
19 causes.

20 Q You've rephrased the question.

21 A I'm asking.

22 Q No, no, no, let me. One at a time. Maybe I
23 asked it wrong. Let me rephrase it. Is there a
24 consensus from your personal knowledge and from your,
25 from what you know personally is there a consensus in

1 the scientific and medical community that tobacco
2 causes lung cancer, heart disease, emphysema, not
3 withstanding the fact that the specific mechanism has
4 not been located? Do you believe that there is a
5 consensus in the scientific --

6 A I think it is a widely held belief. Whether
7 or not that would constitute a consensus, I don't know.
8 Consensus is a very nebulous term.

9 Q But it is a widely held belief?

10 A I think it is a widely held belief.

11 Q If Philip Morris' position is that it is a
12 risk factor from what was articulated to you several
13 days ago, then that position --

14 MR. LOCKMAN: Did you say several days ago?

15 BY MR. MIKHAIL:

16 Q Several years ago.

17 MR. LOCKMAN: Sorry.

18 BY MR. MIKHAIL:

19 Q That would not be consistent with what the
20 widely held belief is in the scientific and medical
21 community; isn't that fair?

22 A It could be a subset of the wildy held
23 belief, but it is not consistent as being -- it is not
24 consistent with the wildy held belief in its
25 entirety.

1 Q Okay. I understood you to say earlier that
2 the legislators have this I guess common knowledge is a
3 good way of saying it, that, you know, smoking is not
4 good for you, cigarettes are not good for you. Did I
5 understand you correctly?

6 A Common knowledge, conventional wisdom, yes.
7 That's, you know, the common basis of thought, yeah.

8 Q Okay. And when you lobby for Philip Morris
9 on various pieces of legislation is the health
10 consequence to Floridians from the outcome of the
11 legislative proposal a factor in what you are
12 attempting to achieve?

13 A I don't understand the question.

14 Q All right. If you are trying to lobby, for
15 instance, on a minors bill having to do with tobacco is
16 the health consequence of tobacco use to minors a
17 factor in the lobbying activity that you engage in, and
18 the position you take as to the minors bill, for
19 instance, and restrictions on tobacco use? Is the
20 health consequences a factor?

21 MR. LOCKMAN: Object to form.

22 THE WITNESS: I still don't understand the
23 question.

24 Are you asking me what do we say and what do
25 we do? Or are you asking -- I mean I don't

1 understand what you are asking. I'm sorry.

2 BY MR. MIKHAIL:

3 Q Have you lobbied in favor of bills in the
4 legislature or against, favor supporting or to defeat
5 bills that deal with restrictions on youth access to
6 tobacco in Florida?

7 A Yes.

8 Q All right. And have those bills dealt with
9 and has your lobbying activity involved restrictions on
10 access to tobacco?

11 A Yes.

12 Q By minors.

13 A Yes.

14 Q And they dealt with the amounts of the fines
15 to be imposed for violators of the law, correct?

16 A It is a much broader tort scheme than that.

17 Q I understand, but that was an element?

18 A That would be an element of it.

19 Q And any jail time that would be involved?

20 A I don't recall any jail time was involved or
21 not. We've been through several permutations of that
22 legislation.

23 Q What about licensing or revocation of
24 licenses for selling tobacco to minors?

25 A Yes, licensing is part of our theme.

1 Q That's something that's been talked about or
2 discussed?

3 A Right.

4 Q What about preemption as it relates to laws
5 dealing with youth access? Do you know what I'm
6 talking about?

7 A Preemption, I know what you are talking about
8 in terms of preemption. I don't know what you are
9 talking about as preemption relates to laws relating to
10 youth access.

11 Q Well, what I'm asking about is preemption as
12 far as youth access laws where the penalties and the
13 provisions of the law would be on a statewide
14 centralized uniform way as opposed to having local
15 communities, local towns, cities, counties have
16 different type of regulations or more restrictive
17 relations.

18 Have you engaged in lobbying activity on
19 behalf of Philip Morris as it relates to youth access
20 laws in Florida as it relates to preemption?

21 A No, other than -- I may have to give you all
22 a little course in Florida constitutional law here if
23 you don't mind.

24 Q No. Briefly, though.

25 A You probably understand it. In essence there

1 are certain things that local governments cannot do if
2 the State does deal with the subject area. For
3 instance, if the State establishes a crime so to speak,
4 the local government is prohibited from modifying the
5 elements of the crime or the penalty for the crime,
6 misdemeanor or something like that.

7 On the other hand, if the legislature enacts
8 legislation dealing with a given subject area, a local
9 government can modify at a local level the substance of
10 the subject area to the extent it is not inconsistent
11 with state law.

12 With one exception. That one exception is
13 under provision of the Florida constitution, the
14 legislature can preempt a subject area from local
15 government ordinance and regulation by an extraordinary
16 vote.

17 Okay. To my knowledge the subject of, to my
18 recollection again -- now this covers a lot of
19 territory -- the subject of preemption of the
20 regulation of youth smoking in terms of the evocation
21 of that constitutional provision, I think it is a
22 three-fifths vote, has never been a subject before the
23 legislature. Not to my recollection.

24 We could be mixing our metaphors because that
25 has been a subject in terms of the regulation of clean

1 air, restaurants and so forth generally.

2 Q I think I opened up an area that we don't
3 really need to get into.

4 A I don't recall that in conjunction with youth
5 smoking is all I'm saying.

6 Q Let me ask it in a different way.

7 A Sure.

8 Q To your knowledge as a lobbyist for Philip
9 Morris --

10 A Right.

11 Q -- and the years of experience that you have
12 had as a lobbyist for Philip Morris, does Philip Morris
13 favor laws dealing with youth access to tobacco in
14 Florida that allow local communities to have more
15 strict provisions, or does it favor state laws that
16 preempt local communities from having more strict
17 regulations?

18 A I don't know, because to the best of my
19 knowledge the subject has never come up.

20 Q Okay. You have never lobbied or worked in
21 the legislative arena on behalf of Philip Morris
22 regarding pieces of legislation in Florida that touch
23 on whether or not it is to be a statewide preemptive
24 legislation or --

25 MR. LOCKMAN: Your question was about youth

1 access.

2 BY MR. MIKHAIL:

3 Q Yes, youth access.

4 A On youth access there may have been a
5 provision in a bill back, way back; but I just, like I
6 say I'm drawing a complete blank as to whether -- as to
7 any kind of interface between the preemption, you know,
8 the ability to preempt on the one hand and youth access
9 on the other.

10 Q Okay.

11 A Like I say, understand that a complex piece
12 of legislation may have 15 permutations through -- or
13 more during the process. The initial permutation may
14 not resemble the final product in anyway whatsoever.
15 So it is just --

16 Q Yeah, I understand that.

17 A Yes.

18 Q Steve, Mr. Lockman may stop me and that's
19 fine, but I'm going to represent to you -- and take it
20 as though it were true, even if I'm not representing it
21 quite right -- but I will represent to you that the
22 tobacco industry nationwide in many states has worked
23 to have laws, youth access to tobacco laws passed or
24 modified or amended in some way to be preemptive; in
25 other words, not to allow local communities to have

1 more strict laws.

2 That same applies for the State of
3 Mississippi where I'm from. What I'm asking you is
4 what has been the experience that you can relate to us,
5 if any, in Florida.

6 MR. LOCKMAN: He has answered that two or
7 three times. He has absolutely no recollection.
8 I'm trying to save you time.

9 BY MR. MIKHAIL:

10 Q Okay. That's fine. You don't know?

11 A Uh-huh. That's correct. I don't know, as
12 far as trying to invoke the preemptive powers of the
13 legislature. I have no recollection that ever
14 occurred.

15 Q Okay. Have you ever arranged, Mr. French, as
16 a lobbyist for Philip Morris, to have experts testify
17 before legislative committees on issues that affect
18 tobacco, arranged for experts to testify that would
19 give the position that Philip Morris wanted conveyed to
20 the legislature?

21 A If I have it was on one or two very limited
22 occasions and several, several years ago.

23 Q Was any one of those occasions the 1985 Clean
24 Indoor Air Act?

25 A Wouldn't have been. The reason being I

1 didn't start lobbying for them until 1986. Sorry. I'm
2 not trying to do a gotcha there, but you asked and I
3 answered.

4 Q That's okay. I can give you -- what about
5 the pieces of legislation in 1991 and '92 to amend the
6 1985 Clean Indoor Air Act in Florida that --

7 A I can't tell you by years.

8 Q That the legislature took up?

9 A The best of my recollection is that at some
10 point in the debate about the Clean Indoor Air Act, I
11 could not tell you the year -- like I say we are
12 covering a lot of ground here.

13 Q I'm representing to you it was '91-'92 --

14 A Okay. I--

15 Q -- that the amendments were proposed to the
16 legislature.

17 A There have been amendments proposed almost
18 every year relating to that. Let's say '91-'92.
19 That's fine. I cannot tell you it was within those
20 years is what I'm telling you.

21 At some point Philip Morris provided us with
22 an expert as I recall who was an academician whose name
23 I couldn't tell you in a thousand years who was an
24 expert in sick building syndrome.

25 Who he was, I think he was from Texas or some

1 place.

2 Q Okay.

3 A That's the extent of my knowledge. I think
4 my involvement of it was more, hey, we got this guy and
5 we want to bring him down, is that okay.

6 I'm saying, well, if you have to. I'm one of
7 these people that, you know, I think we do better work
8 on our own feet without bringing a bunch of experts
9 from out of state.

10 That's okay. They wanted this guy to
11 testify. He testified. I told him who the people were
12 and what they anticipated. He came up said what he
13 said and turned around and left.

14 Q To the best of your recollection it dealt
15 with Clean Indoor Air?

16 A Yeah. The guy had an expertise in sick
17 buildings. So that was the, again, that's --

18 Q That's fair enough. Are there any other
19 instances when Philip Morris discussed with you or
20 arranged with you to provide some expert testimony to
21 the legislature?

22 A At some point we may have worked toward
23 bringing some kind of an expert on taxation. But
24 again, I know we talked about it. I don't think we
25 brought anyone from out of state on taxation.

1 Q Okay. Has Philip Morris in your experience
2 as their lobbyist been opposed to all proposed tax
3 increases on cigarettes in Florida?

4 A Within the constraints of this deposition,
5 yes.

6 Q What does that mean?

7 A It means that there may be areas that we are
8 not going into in the deposition.

9 Q Okay. Well, outside that area.

10 A Yeah, that's correct.

11 Q Generally Philip Morris is opposed to tax
12 increases on cigarettes?

13 A That's correct.

14 Q No matter what the purpose of the tax
15 increase was, correct? For instance, let's say to
16 improve health care.

17 A That's correct.

18 Q To provide a fund for indigent care?

19 A That's correct.

20 Q And does Philip Morris pay any of the taxes
21 on cigarettes in Florida?

22 A On the cigarettes themselves?

23 Q On the cigarette excise taxes?

24 A I don't believe so. I don't recall quite how
25 the stamp tax works, but I don't believe they pay any

1 stamps.

2 Q The excise taxes are paid by the consumers,
3 correct?

4 A Correct.

5 Q Philip Morris doesn't pay those taxes.

6 A You just answered your own question.

7 Q All right. So any revenue that anyone would
8 talk about that the State receives from tobacco excise
9 taxes, cigarette taxes, would be taxes paid by the
10 consumers of the product and not by the Philip Morris
11 company; correct?

12 A That's correct. That would also apply to
13 sales taxes on the ultimate price of the product, which
14 includes excise taxes. Unlike most states, Florida
15 pays taxes on taxes.

16 Q Mr. French, from your experience as a
17 lobbyist for Philip Morris why has Philip Morris
18 opposed all increases on cigarette taxes outside the
19 constraints of the area that we are not getting into?

20 A Unlike other groups, smokers don't tend to
21 have their own lobbyist. While there are small smokers
22 rights organizations here and there, the vast majority
23 of the people who smoke aren't represented by
24 lobbyists.

25 In essence, the company has taken on the

1 representation of its consumers, its constituents so to
2 speak, to represent their interests in terms of
3 cigarette taxes in trying to protect their customers
4 from taxation is the primary, is the understanding I
5 have.

6 Frankly, I think, you know, I've never asked,
7 nor have I ever been told why we oppose the tax other
8 than, you know, it is another cost for the smoker to
9 bear.

10 Q All right. What is the concern that Philip
11 Morris has if the smoker has to pay higher taxes for
12 cigarettes?

13 A Their customers are having to pay more for
14 their products.

15 Q What impact does that have on Philip Morris?

16 A What do I know from Philip Morris what Philip
17 Morris --

18 Q What is your opinion, do you have an opinion?

19 A Do I have a personal opinion?

20 MR. LOCKMAN: You were asking him initially
21 what was conveyed to him by PM.

22 THE WITNESS: Let's focus on what we are
23 asking here.

24 BY MR. MIKHAIL:

25 Q All right, guys. Don't jump on me.

1 A Your questions tend to kind of meld
2 together. I want to make sure I answer your question
3 correctly so I don't have to go back over it.

4 Q Thank you, I appreciate that. Has Philip
5 Morris ever told you why they oppose increase in
6 cigarette taxes in Florida?

7 A No, not except to the extent that I've
8 already articulated the answer.

9 Q All right. Do you know why Philip Morris is
10 opposed to cigarette taxes in Florida?

11 A I think the primary reason is as stated.
12 Now, I know as an opinion -- again, a little bit of
13 background. When the legislature is considering a tax,
14 is the issue of the tax good or bad for business, the
15 economics of the tax are turned over to a bunch of
16 staff people.

17 The staff people then try to figure out what
18 the impact of the tax is going to be in terms of
19 revenues. As part of those considerations, I
20 understand there is a thing called the consumption
21 curve that says there is a point at which you price a
22 product that makes consumption among the users of the
23 product start to go down.

24 I would assume that the consumption curve is
25 something that really exists out there. I don't know

1 anymore about it than what I just said.

2 So I would deduce that if there is such a
3 thing as a consumption curve it is probably some
4 concern that revenues would go down or at least the
5 consumption would cap out.

6 Q It is fair to say that Philip Morris, it is a
7 for-profit company; correct?

8 A Correct.

9 Q All right. I know that the question begs
10 itself, but we are in a deposition situation.

11 A I understand.

12 Q But they want to make money by selling
13 cigarettes in Florida, correct?

14 A They have an obligation to their shareholders
15 to make a profit.

16 Q If the cigarette taxes are high in Florida
17 and consumers have to pay more for it, then there may
18 be less consumption of, or it is likely that there is
19 to be less consumption of cigarettes in Florida; is
20 that correct?

21 MR. LOCKMAN: Personal opinion now?

22 BY MR. MIKHAIL:

23 Q I don't know if it has to be personal.

24 A I never heard that from Philip Morris. Okay.
25 My own personal opinion is if there is such a thing as

1 a consumption curve then that's a logical deduction
2 that a person could draw.

3 Q All right.

4 A If you --

5 Q We've established that you haven't heard it
6 from Philip Morris.

7 A Yes, that's a logical conclusion a person
8 could draw.

9 Q Sure. A logical conclusion you draw that
10 Philip Morris is opposed to taxes is because it my
11 result in less consumption of its product and therefore
12 less profit; isn't that right?

13 A No. What I said is that if there is this
14 phenomenon known as a consumption curve that really
15 works out there, I would speculate that there would be
16 a concern to Philip Morris that an increase in the
17 price of its product would reduce consumption.

18 Q And reduction in consumption would mean less
19 profits, wouldn't it?

20 A A lot of lines of business out there;
21 potentially, sure. I'm not trying to spar with you on
22 semantics.

23 Q I understand.

24 A But it is important for me to be precise.

25 Q You answered it. That's fine. You have

1 lobbied, have you not, Mr. French, against legislation
2 in Florida in the years that you've worked as a
3 lobbyist which are proposed to impose restrictions on
4 the use of tobacco in Florida, isn't that correct?

5 Do you know what the term "use restrictions"
6 means?

7 A Why don't you tell me what you think it means
8 and see if we are on the same age.

9 Q It is the use of smoking -- for instance,
10 smoking in public places, in restaurants, in schools,
11 in hotels, in public buildings, in the work force, in
12 the work police.

13 Have you lobbied on behalf of Philip Morris
14 to defeat legislation proposing further restriction on
15 smoking in Florida?

16 A Yes. There have been elements of legislation
17 that impose restrictions in certain places and in
18 certain forums that we proposed.

19 There have been other items of legislation
20 that we've worked very closely with proponents to try
21 to establish some kind of a balance as between the
22 legitimate interests of industry and the consumers with
23 those of the people that think smoking ought to be
24 banned entirely. It is a hybrid answer.

25 Q Has Philip -- I'm sorry, I didn't mean to

1 interrupt you.

2 A We certainly lobbied against certain kinds of
3 use restrictions. To say we lobbied against use
4 restrictions generally or generically is not only an
5 understatement, but it is not true.

6 Q In general terms isn't the tobacco industry
7 including Philip Morris opposed to restrictions,
8 generally, restrictions on smoking?

9 MR. KELLER: Object to the form.

10 MR. LOCKMAN: You are asking about in
11 Florida?

12 MR. MIKHAIL: Yes, in Florida.

13 MR. LOCKMAN: Okay.

14 THE WITNESS: In general terms, you know, I
15 think in the ideal world of Philip Morris there
16 would be no restrictions.

17 I think at the same time Philip Morris as a
18 fairly major and fairly savvy corporation is aware
19 of the need to balance competing public interests,
20 and try to find some level of accommodation of
21 those interests that is consistent with the needs,
22 desires, wishes of as many people as possible.

23 So it has been an ongoing evolution of
24 compromising consensus in addition to opposing
25 certain things and advocating others. It is not

1 as simple as yes and no and black and white.

2 BY MR. MIKHAIL:

3 Q As far as Philip Morris is concerned the
4 ideal in Florida is that there would be no
5 restrictions; correct?

6 A I don't know if that would be the case
7 anymore. I think at one time it may have been. That
8 may have even been overstated. I think there are
9 obvious places where I think Philip Morris would
10 support restrictions, schools, day care centers, places
11 like that. So I probably overstated that.

12 Q Are you familiar with Senator Malchon's
13 proposed bill in 1991 to restrict or ban smoking in day
14 care centers and schools?

15 A And several other places.

16 Q And colleges -- right. I think it included
17 restaurants and stairways and hallways of public
18 buildings that have previously been designated as
19 smoking areas. Are you aware of that?

20 A I have not seen that since 1991. I remember
21 there was a bill, I think it was more remarkable in
22 terms of the areas that a person still could smoke as
23 opposed to places they couldn't.

24 Q Was Philip Morris --

25 A But I recall the legislation.

1 Q Was Philip Morris in favor of that
2 legislation or opposed to it?

3 A At what point in time?

4 Q I believe Senator Malchon proposed it, and an
5 amendment was attached to the bill by Representative
6 Burke, I believe. Do you remember that?

7 A I remember the amendment being attached. Now
8 that you are refreshing my recollection by bringing up
9 the name --

10 Q Right, let me remind you -- I don't want to
11 interrupt you -- the amendment dealt with smokers
12 rights, that an employer couldn't discriminate against
13 an employer for smoking at home.

14 A I remember.

15 Q And outside the work force, do you recall
16 that?

17 A Uh-huh.

18 Q What was the tobacco industry's position on
19 that amendment by Representative Burke?

20 A The industry favored the amendment.

21 Q And the amendment killed the bill, didn't
22 it?

23 A No. Senator Malchon did not like the
24 amendment so Senator Malchon killed her own bill. I
25 think the legislature would have passed a version of

1 Senator Malchon's bill that again would have been a
2 compromise between her laundry list of every place
3 known to mankind versus a more reasonable balance if it
4 had that privacy provision in it.

5 I think the legislature would have passed
6 it. As I recall it was either that session or the
7 following session of the legislature when that exact
8 same amendment -- maybe fine tuned a little bit --
9 actually passed the legislation.

10 Q Why was Philip Morris opposed to Senator
11 Malchon's bill without the amendment?

12 A Without the amendment? As I recall, the
13 bill, it, the main reason -- and again, you know, we
14 are going back six years. The main point of opposition
15 had to do with the expansion of the prohibition on
16 restaurant smoking.

17 There was some other places on there in
18 addition to like I say, you know, the day care centers
19 and the like. We never had a problem with day care
20 centers and schools and places like that, to the best
21 of my recollection.

22 Q But isn't it true that the restaurant
23 association, itself, in Florida did not oppose that
24 provision in Senator Malchon's bill to have a 35
25 percent set aside in restaurants for nonsmokers, and

1 yet Philip Morris and other members of the tobacco
2 industry opposed it; isn't that true?

3 A No, I don't think so. My recollection,
4 Steve, is that we --

5 Q Charles.

6 A Charles, sorry.

7 Q That's okay. You're used to talking to your
8 lawyer, huh?

9 A Excuse me. I'm sorry.

10 Q That's all right. No problem.

11 A My recollection is that the position of
12 Philip Morris and the position of the restaurant
13 association have been pretty much in lock step. If
14 they, you know, if it was 35 percent if they could have
15 gone along it was a good chance, I just, you know --

16 Q But if I represent to you that the restaurant
17 association had no problem with it or at least agreed
18 to go along with it, and that the tobacco industry and
19 Philip Morris still opposed it, what could you tell me
20 about that?

21 A That would surprise me, but it could have
22 been. I don't remember. All I remember is again once
23 that privacy amendment went in, most of the rest of the
24 bill was at that point something we could have lived
25 with. So to say we killed that bill is just not true.

1 Q Did you read, there was a -- I'm not sure if
2 it was a Miami Herald or maybe the Tallahassee -- is it
3 the Democrat?

4 A Yes, unfortunately.

5 Q Are you a Republican? No, you're a Democrat.

6 A It is not much of a newspaper, that's all.

7 Q Oh, okay.

8 A The pride of Knight-Ridder.

9 Q You may want to move to strike that portion
10 of the deposition.

11 MR. LOCKMAN: We don't want to give that part
12 to the newspaper, do we?

13 BY MR. MIKHAIL:

14 Q Anyhow. I lost my train of thought here for
15 a minute.

16 A You were asking me about a newspaper story.

17 Q Yeah, there was a newspaper story that a
18 Philip Morris lobbyist jumped up and down in the
19 chamber and yelled yeah, yeah, when Senator Malchon's
20 bill was defeated with what they called the killer
21 amendment from Representative Burke attached to it.

22 Was that you?

23 A No.

24 Q Do you know who else was lobbying for Philip
25 Morris at that time?

1 A I am pretty sure that Jack and Keana Corry
2 (phonetic) were lobbying for Philip Morris at that
3 time.

4 I don't remember whether or not Jim Rathbun,
5 R-A-T-H-B-U-N, had been brought on at that time or
6 not. I just don't remember.

7 And at another point in time there was a
8 fellow named Bill Harrell who is no longer with us who
9 lobbied for Philip Morris.

10 And you know, they were all, they all came
11 and went about that same period of time. So it could
12 have been --

13 Q You don't recall that incident being
14 reported?

15 A No. I don't recall it, no. And am I willing
16 to accept the Tallahassee Democrat as a source of
17 ultimate truth? No.

18 Q I didn't ask that question.

19 A I understand.

20 Q Have you worked in your capacity as a
21 lobbyist for Philip Morris to promote or advance
22 legislation in Florida in the area of products
23 liability or tort reform?

24 MR. LOCKMAN: I'm sorry, Charles, I didn't
25 hear the question.

1 MR. MIKHAIL: In the area of tort reform or
2 product liability.

3 MR. LOCKMAN: Whether he worked for tobacco
4 or --

5 BY MR. MIKHAIL:

6 Q In your capacity as a lobbyist for Philip
7 Morris --

8 MR. LOCKMAN: Okay, thank you.

9 BY MR. MIKHAIL:

10 Q -- representing Philip Morris, have you
11 worked to advance or promote or support legislation in
12 Florida in the area of tort reform or product
13 liability?

14 A If I ever did the involvement was so
15 peripheral and so minor -- I don't remember ever
16 talking to a single legislator nor ever testifying in
17 front of a committee on behalf of Philip Morris or
18 talking to a staff person.

19 I don't recall anything that I considered to
20 be lobbying on behalf of Philip Morris that deals with
21 the tort reform issue.

22 Q Did Philip Morris lend support to other
23 entities, other organizations who were attempting to
24 have legislation passed in the area of product
25 liability and tort reform? Such as the Florida medical

1 association, for instance.

2 MR. LOCKMAN: Object to the form of the
3 question.

4 THE WITNESS: What does lend support mean?

5 BY MR. MIKHAIL:

6 Q Well, were they supportive of efforts by, for
7 instance as an example, the Florida Medical Association
8 to put caps on compensatory damages, for instance?

9 A To the best of my recollection if Philip
10 Morris was supportive of it, it was in name only as
11 opposed to dedicating or committing legislative
12 resources such as me toward the effort.

13 So you know, I guess perhaps nominally, but I
14 just don't remember specific issues that we even really
15 talked about.

16 Q What about the issues of putting limits or
17 banning punitive damages or putting limits on punitive
18 damages?

19 A I don't recall that we were ever active on
20 the issue of punitive damages on behalf of Philip
21 Morris.

22 Now, realize that, you know, again my firm
23 and I have other legislative clients that have been
24 very active in various tort reform issues. But, you
25 know, again on behalf of Philip Morris, I would say

1 Philip Morris' interplay on tort reform issues has been
2 minimal.

3 I don't want to say nonexistent, but I can't
4 recall ever being engaged to speak on a tort reform
5 issue wearing a Philip Morris hat, nor have any of the
6 other Philip Morris lobbying team members.

7 Q That you are aware of?

8 A To the best of my recollection.

9 Q Does Philip Morris generally take positions
10 that are opposite voluntary health groups such as the
11 American Lung Association, the American Cancer Society
12 as it relates to specific legislation dealing with
13 smoking?

14 A Not necessarily.

15 Q Can you name me any instances when Philip
16 Morris worked alongside and on the same side of any
17 voluntary health group?

18 A Yes.

19 Q As it relates to legislation in Florida
20 dealing with smoking?

21 A Yes.

22 Q And can you give me those examples?

23 A This 1997 on the youth access law that
24 passed. We were essentially in lock step and worked
25 closely with two of the three major anti-smoking

1 organizations: lung, heart, and cancer. I can't keep
2 them straight which is which.

3 So I mean I honestly can't. They all look
4 alike to me. I'm not going to tell you which two it
5 was, but it was the two mainstream organizations as
6 opposed to the renegade zealots. We didn't work with
7 the renegade zealots very well. I don't remember which
8 ones they were.

9 Q You don't work with bomb throwers?

10 A Not on that side of the aisle.

11 Q That's what they've been called by others,
12 but I'm not referring to them as that.

13 Let me ask you this: What did this involve
14 when you worked or worked with them, what was this
15 about?

16 A It was basically trying to pass in
17 essentially the form as introduced the legislation that
18 was considered by the 1997 session of the legislature.

19 Q What did it deal with?

20 A It dealt with youth access by basically
21 making it a dual infraction for a minor to buy and
22 possess cigarettes. That was one of the pieces.

23 It had some public service for a kid that was
24 caught with cigarettes, this, that and the other.

25 As I recall it also beefed up some of the

1 enforcement provisions such as the ability, clarifying
2 the ability of the state agency to use minors in a
3 sting operation.

4 There were certain limitations on marketing
5 as I recall that dealt with possibly vending machines.
6 I don't recall the final, final permutation. But we
7 worked hand-in-glove with the, with the, with at least
8 one person in the governor's office, with
9 representatives of two -- with the two legitimate
10 anti-smoking organizations, and with everyone else who
11 had an interest in seeing the legislation passed; and
12 frankly put a lot of, a lot of time and effort in
13 moving it through the process.

14 Q Philip Morris' position was that it was okay
15 to have some penalties regardless of the range against
16 the minors, themselves?

17 A It was better than okay, it was a good idea.

18 Q Okay. What about, what's Philip Morris'
19 position been on penalties against the owners of
20 stores, convenience stores, selling tobacco to minors
21 illegally as opposed to just penalties against the
22 clerk who sells it?

23 A That given -- as I recall, now again,
24 basically a licensing system, a license to sell
25 cigarettes that could be revoked and a fine system was

1 more than adequate as a means of disciplining these
2 people from selling cigarettes to minors; but that some
3 form of a criminal sanction for the clerks that
4 actually made the sale was appropriate, but not to the
5 owners.

6 Q Okay. So Philip Morris was opposed to any
7 kind of criminal penalties against the store?

8 A Against the owner of the store.

9 Q The owner of the store.

10 A Or the corporation?

11 Q Well, the owner.

12 A I honestly don't know because I don't recall
13 at least this year getting involved with that
14 particular aspect of the issue. I think if that was
15 even in the original bill that went away so quickly I
16 don't think we ever engaged on it. If we did it was
17 peripherally.

18 Q What about Philip Morris' position on
19 revocation of licenses to do business of stores that
20 sell tobacco to minors?

21 A This session we are very comfortable with
22 that.

23 Q What was that position?

24 A At some point after enough sales, I don't
25 recall the magic numbers, that the revocation was

1 appropriate.

2 Q Can you tell me how many sales Philip Morris
3 would be willing to agree to having licenses revoked?

4 A No. I don't recall --

5 Q A second offense?

6 A I don't recall the number at all.

7 Q Do you remember if it was third offense?

8 A I don't recall the number at all.

9 Q Do you remember if it was like five or ten?

10 A I've answered the question twice, Charles.

11 MR. LOCKMAN: He is saying --

12 MR. MIKHAIL: Just a minute.

13 MR. LOCKMAN: Wait, let me finish. He is
14 saying your mentioning another number is not
15 refreshing his recollection.

16 MR. MIKHAIL: Steve, I know what I'm saying
17 and I hear what he is saying.

18 BY MR. MIKHAIL:

19 Q But you know as well as I do, Mr. French, and
20 you know as well, Steve, I'm asking you, do you
21 remember if it was under five or over five offenses,
22 under ten, over ten? Are you saying you have no idea?

23 A Charles, it is nothing I paid any attention
24 to. I have no idea. You know, pick a number off your
25 driver's license. I wouldn't know. Honestly.

1 Q But when we are dealing with, quote, multiple
2 offenses at which Philip Morris would have been
3 comfortable having a license revoked, you are telling
4 me today at this deposition you have no earthly idea
5 even the range of the number of offenses where Philip
6 Morris was comfortable; is that what you are saying?

7 A I honestly don't.

8 Q Okay.

9 A I honestly don't as we sit here today because
10 again that wasn't an issue.

11 Q But that's your testimony --

12 A Yeah.

13 Q -- you can't even give a number?

14 A I can't give a number. It wasn't an issue.

15 Q All right. Fair enough. Does Philip Morris
16 in your work as a lobbyist for them work with other
17 organizations in Florida that have interrelated or
18 common interests?

19 A Yes.

20 Q All right. Such as, for instance, the
21 Florida Retail Federation?

22 A From time to time.

23 Q The Florida, I think it is called the
24 Amusement Vending or Amusement Vending Machine
25 Association or anything like that, people who are

1 involved in the vending machine business?

2 A Yes. There are two vending associations.

3 We've worked with at least one of them.

4 Q On interests that are common to both of you?

5 A Right.

6 Q What about the Florida Tax Watch Group?

7 A I'm not sure "work with" is a good choice of
8 words there because Florida Tax Watch is an autonomous
9 and independent organization whose mission so to speak
10 is to review tax policy and spending issues, so forth.

11 Philip Morris is a member of Tax Watch. Tax
12 Watch at one point did a study on the regressivity of
13 cigarette taxes, which obviously showed cigarette tax
14 is the most regressive form of taxation you can think
15 of and testified to that effect. So that is the nature
16 of that relationship.

17 Q You said that they are member of the Tax
18 Watch, to your knowledge?

19 A Uh-huh.

20 Q All right. I guess -- are there dues, to
21 your knowledge?

22 A I'm sure there are, but I have no idea what
23 they are. There is hundreds of members, most of which
24 are corporate. It is a very broad-based organization.

25 Q What about the Florida Retail Federation? Do

1 you know if Philip Morris is a member?

2 A I don't know. I know we have discussed it,
3 but I don't know whether it actually got carried out.
4 If so it would be a very minimal participation.

5 Q Would you be the one, Mr. French, you may not
6 be, but would you be the one like the liaison or the
7 conduit for Philip Morris joining any of these Florida
8 based associations and groups?

9 A Possibly, but not necessarily.

10 Q So they could have joined some group you are
11 unaware of?

12 A Absolutely and probably did.

13 Q That's what I'm asking.

14 A Sure.

15 Q You mentioned earlier that you didn't believe
16 that the smokers in Florida, the consumers really had a
17 lobby or lobbyist or anyone to represent their
18 interests in the Florida Legislature; is that correct?

19 A Other than some small isolated groups of
20 smokers that are out there that I'm generally aware
21 of. But to my knowledge these people either don't or
22 haven't seen fit to hire a lobbyist.

23 Q What is the interest of these smokers?

24 A Taxation and regulation of smoking, I think.
25 I mean that's my understanding.

1 Q And when Philip Morris engages in its
2 lobbying activities it is attempting to protect and
3 advance the interests of those smokers?

4 A Protect and advance those interests, and
5 again, try to accommodate those interests with the
6 other competing interests that are before the
7 legislature.

8 Q Since no one speaks for them as such?

9 A Right.

10 Q Is there a formal organization in Florida --
11 you are familiar with the National Smokers Alliance,
12 for instance, or national smokers?

13 A Yeah, vaguely. I think there is some kind of
14 organization, but I couldn't tell you who they were,
15 where they were, how many of them there are.

16 Q In Florida do you know of any such
17 organization, whether it is a chapter of a national
18 group or a Florida based group or anything like that,
19 are you familiar --

20 A I think there is a chapter somewhere, but I
21 mean again it is not anything I've dealt with on any
22 kind of basis at all.

23 Q You can't tell me specifics about any of
24 those?

25 A I couldn't tell you about them.

1 Q As a lobbyist representing Philip Morris do
2 you recall any instances when you worked directly with
3 a representative of any of those groups in lobbying the
4 legislature?

5 A I recollect that at some point a
6 representative of one of the national smokers rights
7 groups came to Florida. And I recall that person
8 testifying. I think it was a man as opposed to a
9 woman. I can't tell you when.

10 With all due respect to these people it was
11 kind of throwaway testimony. I mean you know, they
12 didn't have a very big group. They weren't terribly
13 well informed. We tried to help them, but it wasn't a
14 real close coordination because frankly we had plenty
15 of other fish to try.

16 I'm not trying to demean what they do in any
17 way, but I'm just saying it was not -- this was not a
18 major component of our lobbying activities.

19 Q Is it fair to say you don't on a regular
20 basis confer with representatives of either the
21 national smokers groups or the Florida, any Florida
22 smokers groups as to your lobbying activity on various
23 pieces of legislation in Florida?

24 A That's a fair statement.

25 Q Yet you in representing Philip Morris believe

1 you are also representing their interests?

2 A No. I think actually what I said is that we
3 are representing the community of smokers as a whole as
4 opposed to that relatively small percentage of smokers
5 who see fit to form up their own groups on smoking
6 issues.

7 So I mean I think we see ourselves as
8 representing the millions of customers as opposed to
9 the tens or hundreds of people that choose to form up
10 into groups.

11 Q So in other words there is a piece of
12 legislation in Florida. You are going to take the
13 position in the legislature as a lobbyist for Philip
14 Morris one way or the other.

15 You don't call up John Doe, president of the
16 Tallahassee smokers alliance or smokers group and meet
17 with him or her to decide what do you do about this
18 piece of legislation. You don't do that, do you?

19 A That's correct.

20 Q You do what Philip Morris wants done?

21 A That's correct.

22 Q All right. How about unions, Mr. French? Do
23 you personally on behalf of Philip Morris work with any
24 unions as it relates to various legislative action in
25 the Florida Legislature, what unions want?

1 A Within the constraints of the deposition --

2 Q That's fine.

3 A -- I don't recall ever having worked with
4 unions. There may have been some involvement with
5 unions on the, on the privacy legislation back in the
6 '90s, early '90s.

7 I just don't recall directly what the
8 interaction was. I know there was some discussion of
9 that. I don't recall specifically names, dates,
10 places.

11 Q Do you recall if that had anything to do with
12 smoking in the work place?

13 A It may very well have. My recollection is
14 that unions consider smoking in the work place to be a
15 -- it has been a long time since I had labor law.

16 What is the stuff subject to negotiation in
17 labor law? You know --

18 Q Collective bargaining?

19 A Yeah, subject to collective bargaining.

20 Q I didn't take labor law either, but I had to
21 study it for the Bar exam.

22 A I took it a lot earlier than you did, a lot
23 longer ago. But I recall the union saying that smoking
24 in the work place was a collective bargaining issue.
25 They didn't want the legislature taking something off

1 the collective bargaining table.

2 I think that's where they were coming from.
3 Did we interact with them? Yeah, probably a little
4 bit, but not significantly.

5 Q In dealing with issues in the legislature
6 about smoking in the work place --

7 A Right.

8 Q -- in view of what I understand you to say,
9 your understanding is of the union's position, you
10 don't regularly on behalf of Philip Morris contact
11 union representatives as it relates to certain
12 legislation in Florida?

13 A That's correct.

14 Q Who is Wilson Wright?

15 A Wilson Wright is a Tallahassee attorney who
16 represented, as I recall, The Tobacco Institute for
17 several years. At some point he started representing,
18 changed his representation to RJ Reynolds for some
19 brief period of time.

20 I'm not sure if it was RJ Reynolds. I think
21 he did. He also is the Executive Director and I guess
22 lobbyist for the tobacco, Florida Candy and Tobacco
23 Association, which I think are the wholesalers of
24 tobacco and candy products.

25 Q In your representation of Philip Morris as a

1 lobbyist over the years since 1980 -- did we
2 establish --

3 A '86.

4 Q '86, okay. Have you worked closely with
5 Wilson Wright?

6 A On occasion.

7 Q How occasionally?

8 A Well, back in the, back during the time he
9 represented The Tobacco Institute -- and like I say I
10 think there was a small RJ Reynolds representation --
11 on most issues we would be involved. We would work on
12 things.

13 You know, I guess in addition The Tobacco
14 Institute also at some point hired Guy Spearman
15 (phonetic) as their lead lobbyist so to speak. I
16 worked a lot more closely with Guy than I did with
17 Wilson.

18 Also at some point RJ Reynolds hired an
19 attorney named Larry Williams here in town. I also
20 worked with Larry a lot more closely than I did with
21 Wilson.

22 Q What are the common interests, can you tell
23 me two or three, or three or four, or just the primary
24 common interests between Philip Morris and the Florida
25 Candy and Tobacco Association?

1 A I think the generic common interest is any
2 restrictions on the sale and use of tobacco products
3 that is imposed on the manufacturer and that -- well,
4 it is also going to either trickle down or be directly
5 imposed on the wholesaler, whether it is in terms of
6 diminution of sales or where the product can be sold or
7 whatever like that.

8 I think what you have is a common product.
9 And the common product creates a common interest in
10 terms of the regulatory standards.

11 Q Would Philip Morris be protecting the candy
12 and tobacco association and its members' interests, or
13 is it the other way around that the candy and tobacco
14 association is protecting Philip Morris' interest, or
15 is it a two-way street?

16 A I think it is a little bit of both. I think
17 there is a common interest there. Well, I think it is
18 a common interest there.

19 Q Personally do you believe that nicotine in
20 tobacco is an addictive?

21 A What do you mean by addictive?

22 Q The surgeon general defines addiction, and
23 I'm going to paraphrase, it has the qualities of a drug
24 that affects the physiology of the brain; that it has
25 an impact on altering brain function; that it has the

1 same type of affect as other recognized drugs such as
2 cocaine, for instance.

3 In that context do you believe that nicotine
4 is addictive?

5 MR. LOCKMAN: Just to clarify, the last time,
6 a couple seconds ago when you asked the question
7 you stated personally.

8 MR. MIKHAIL: Yeah, personally.

9 MR. LOCKMAN: Personal opinion question?

10 MR. MIKHAIL: Right, I'm asking a personal
11 opinion question.

12 MR. LOCKMAN: All right.

13 MR. KELLER: I object to the form.

14 THE WITNESS: I personally honestly don't
15 know the answer to that question. Physiologically
16 addictive, I honestly don't know.

17 BY MR. MIKHAIL:

18 Q What about, do you know whether Philip
19 Morris, your client, believes that nicotine and tobacco
20 is addictive in the definition that I gave you?

21 A The only bases for my knowledge would be that
22 I watched with the rest of everyone else the executives
23 of the tobacco company, including Philip Morris, stand
24 before a Congressional committee in 1994 and testify
25 that tobacco was not addictive.

1 That is the sole basis for my knowledge of
2 whatever their position was in 1994. I have no recent
3 nor basis prior to then. That's the exclusive basis
4 which is the same basis anyone else would have.

5 MR. MIKHAIL: All right. Excuse me just a
6 second.

7 (Brief pause.)

8 BY MR. MIKHAIL:

9 Q Would you say, Mr. French, that testimony,
10 sworn testimony before a Congressional committee by the
11 head of Philip Morris influenced your opinion about
12 whether or not tobacco is -- if nicotine is addictive?

13 MR. KELLER: Object to the form. I thought
14 he said he didn't have an opinion.

15 BY MR. MIKHAIL:

16 Q Did it influence your thinking in terms of
17 whether or not tobacco -- nicotine is addictive?

18 A No. In terms of my personal opinion, no. It
19 did not influence my personal opinion.

20 Q Okay. In your personal opinion, if I
21 understood correctly, you don't have one, you don't
22 know?

23 A I just honestly don't know. Again, I think
24 this is Nobel Prize material for someone that claims
25 they did.

1 Q You are handing out Nobel Prizes left and
2 right today.

3 A They are rather cheap today. Just don't try
4 to cash the check.

5 Q I'm going to honor my gentleman's word to you
6 to cut in ten minutes, so I will try to get through
7 this.

8 MR. LOCKMAN: We are not against finishing
9 early either.

10 MR. MIKHAIL: I am going to take my full ten
11 minutes, Steve. Don't press your luck.

12 BY MR. MIKHAIL:

13 Q Do you know what the tobacco industry's
14 collective position is as to whether or not there is
15 proof that cigarettes cause various illnesses?

16 A No.

17 Q Do you know what the voluntary health groups'
18 position is as to whether or not cigarettes cause
19 various illnesses?

20 A Yes.

21 Q Okay. What is that position?

22 A My understanding is that it is their position
23 that cigarette smoke causes a variety of illnesses. As
24 a matter of fact, there was even testimony several
25 years ago that cigarette smoke caused AIDS. Bet that's

1 a new one to you, huh?

2 Q You are teaching me a lot today. But
3 seriously.

4 A Yeah.

5 Q You know what their position is?

6 A Yes, I'm aware of their position.

7 Q Are you aware of what the surgeon general's
8 position is as to whether or not it causes various
9 illnesses?

10 A Yes.

11 Q Are you aware of what the public health
12 official's position is in Florida on that issue?

13 A Yes.

14 Q Yes?

15 A Yes.

16 Q I just want to make sure she picked it up.

17 A Sure.

18 Q Are you aware of what the, as the tobacco
19 industry has claimed in court papers, and as you've
20 testified about common knowledge among legislators,
21 what the general public believes about whether or not
22 tobacco causes various illnesses?

23 MR. KELLER: Object to the form.

24 BY MR. MIKHAIL:

25 Q Do you know what the public's, the extent of

1 the public's knowledge is about whether or not tobacco
2 causes various illnesses?

3 A No. I don't think I know. I mean how could
4 any one person? I mean, you would have to be God to
5 know the extent of the public knowledge on something
6 like that. That's, that goes way beyond anything I
7 could possibly know.

8 Q Would you be able to tell me today whether or
9 not it is common knowledge in Florida that tobacco
10 causes various illnesses?

11 A No. I don't think I'm qualified to say
12 that. I'm not a public opinion person. You know, I'm
13 just, I just know what I know. I do think it is common
14 knowledge within the legislature that smoking is
15 unhealthy. That's the extent.

16 Q If I ask you this question this way, Mr.
17 French, is it common knowledge in Florida that tobacco
18 causes various illnesses, would you be able to answer
19 that question?

20 A No, I wouldn't be able to answer that. I
21 don't have the background to do that.

22 Q You couldn't answer one way or the other?

23 A I could give you a personal opinion as a lay
24 person.

25 Q What is your personal opinion?

1 A My personal opinion as a lay person is that
2 it is common knowledge that cigarette smoking is
3 related enough to an array of disease conditions that
4 it is, it is probably hazardous.

5 Q You've worked as a lobbyist --

6 A I think that is the public perception, which
7 was the answer to your question.

8 Q Right. I didn't mean to jump in ahead of
9 you.

10 A I understand. I just want to make sure we
11 are playing on the same page.

12 Q You have represented Philip Morris for what,
13 some 11, 12 years --

14 A Uh-huh.

15 Q -- correct? They have been your client?

16 A Right.

17 Q And they are a manufacturer of tobacco
18 products, correct?

19 A That's correct.

20 Q And you work on legislation in the Florida
21 legislature affecting and dealing with tobacco and the
22 use of tobacco; correct?

23 A That's correct.

24 Q Is it your testimony, Mr. French, that you
25 know what the public health official's position is, you

1 know what the voluntary health groups' position is, you
2 know what the legislature's belief is, you know
3 generally what the perception is among the members of
4 the public about whether or not tobacco causes illness,
5 but you are not prepared to tell me what the tobacco
6 industry believes about this issue, is that your
7 testimony?

8 A I think actually if you will go back and look
9 at my testimony I've answered that question about four
10 times in four ways. I won't answer it again.

11 Q Answer it to me in the way I've asked it
12 now.

13 A No, sir. I've answered that question four
14 times in four ways. I'm not going to sit here and be
15 subjected to multiple questions of the same question
16 over and over again.

17 Q Mr. French, I'm not harassing you.

18 A No, I think --

19 Q I've tried to be very polite to you today.

20 A I think you crossed the line. I'm just
21 saying I'm not going to answer it. It has been --

22 Q I'm going to ask it.

23 MR. LOCKMAN: Asked and answered.

24 BY MR. MIKHAIL:

25 Q Do you know what the tobacco industry's

1 position is?

2 MR. LOCKMAN: He's already answered the
3 question.

4 MR. MIKHAIL: Are you instructing him not to
5 answer?

6 MR. LOCKMAN: I am not instructing him. He is
7 telling you he has --

8 THE WITNESS: The question has been asked and
9 answered. I'm not going to answer the question.

10 BY MR. MIKHAIL:

11 Q Are you getting uncomfortable?

12 A No, sir. I'm not getting uncomfortable. I'm
13 getting bored with answering the same questions over
14 and over again.

15 And I'm entitled under the Florida Rules of
16 Civil Procedure and everything else not to be subjected
17 to this kind of question.

18 Q Are you going to answer the question as I
19 asked it this last time?

20 A No, sir. I've told you that four times now.

21 Q That's fair enough.

22 A That's four times you asked the same question
23 over again.

24 Q You are not going to answer it?

25 MR. LOCKMAN: Because it has already been

1 answered.

2 THE WITNESS: Let's make that five.

3 BY MR. MIKHAIL:

4 Q Do you know, Mr. French, whether or not the
5 tobacco industry or an objective or a goal of the
6 tobacco industry is to create doubt about the health
7 consequences of tobacco use?

8 A I have never understood that to be a goal,
9 nor have I ever been told or been led to believe that
10 was a goal of the industry. It is nothing in my
11 knowledge or background that would lead me to believe
12 that's a goal of the industry.

13 Q Okay. Is there a code of ethics in Florida
14 for lobbyists?

15 A There is not a, there is neither a statutory
16 nor a legislative regulatory code of ethics as such.

17 There is some things in the rules of the
18 House and Senate about what lobbyists should and
19 shouldn't do. You can call that a code of ethics if
20 you wanted to.

21 Q Is it mandatory? Is it like a law?

22 A Within the rules of the House and the Senate,
23 yes. It has the effect of law.

24 Q What are some of those things, do you know?
25 Can you give me two or three major things you recall?

1 You are very familiar with them.

2 A Don't intentionally misrepresent something
3 before a committee of the legislature. That's the big,
4 you know. File your financial disclosure reports on
5 time. I mean there is some things like that.

6 You mean in terms of anything as extensive as
7 the Code of Professional Responsibility for lawyers --

8 Q For lawyers?

9 A -- there is no common, no parallel.

10 Q But your knowledge within the legislature's
11 rules?

12 A Yeah.

13 Q No statute that requires lobbyists to do
14 certain things from an ethical standpoint, to your
15 knowledge?

16 A From an ethical standpoint, no. I will tell
17 you, though, that as an attorney I consider myself to
18 be as bound by our code of professional conduct when I
19 lobby as I am when I'm practicing before a judge or
20 sitting in this deposition.

21 Q And all the standards of the code of
22 professional responsibilities or is it code of-- or is
23 it rules of professional conduct in Florida?

24 A Whichever it is.

25 Q Whatever those rules are?

1 A Yes --

2 Q You believe that as a lawyer and a lobbyist
3 that when you are acting as a lobbyist you are to
4 conform with the rules that govern lawyers as well?

5 A Absolutely that's the rule. We are bound by
6 those 24 hours a day.

7 Q I understand. I'm familiar with them --

8 A I understand.

9 Q -- having worked with the Bar for years.

10 A I will take your word for it.

11 Q Quickly, isn't there a voluntary association
12 of professional lobbyists in Florida? I think John
13 Shebel was the president at one time. Are you familiar
14 with that organization?

15 A There was at one time. I don't know if it
16 still exists. I know I didn't join it. Some people
17 joined it and some didn't. I'm only generally familiar
18 with the organization.

19 Q Lobbyists are not permitted to lie to
20 legislators, are they?

21 A That's a fair statement, if they are a
22 lawyer.

23 Q That's correct. And they are not permitted
24 to withhold material information to legislators, are
25 they, affecting the legislation?

1 MR. LOCKMAN: Object to the form.

2 THE WITNESS: I don't understand what you
3 mean by material.

4 BY MR. MIKHAIL:

5 Q Do you believe in lobbying a legislator on an
6 issue you have a duty or obligation to provide that
7 legislator with all sides?

8 A No, sir.

9 Q All right. What do you believe your duty and
10 obligation is?

11 A I think my duty and obligation is to make
12 sure the legislator understands from whatever source
13 that there are multiple sides to an issue. But I don't
14 feel that I have an obligation necessarily to provide
15 the other side if I feel or if I know that the other
16 side is being provided. Number one.

17 And number two, I don't feel that I need to
18 cast the opposition in necessarily the same terms and
19 phrases that my opponents would cast it in.

20 As an advocate I think responsible advocacy
21 says you have to address the other side's arguments,
22 but you don't necessarily have to make them for them.
23 That's my approach to the legislature.

24 Q Do you see a lobbyist in the same light? I
25 know they are not exactly the same. You happen to be a

1 hybrid in that you are a lawyer and a lobbyist.

2 Do you see a lobbyist's roll in the same
3 light as a lawyer advocating the position of his or her
4 client? Is that how you view a lobbyist's position?

5 A Yeah, I think a lobbyist is simply an
6 advocate in another forum with a somewhat different set
7 of ground rules. But in terms of the ethics of it, in
8 terms of what is right and wrong, I don't see there is
9 any major difference.

10 Q You know under the rules of ethics for
11 lawyers they are to provide a tribunal, a court, with
12 material information whether or not it is in favor of
13 their position or opposite their position?

14 A That's correct.

15 Q All right.

16 A Or know that it is provided for. Again, you
17 know --

18 Q Not allow the court to be without that
19 material information?

20 MR. LOCKMAN: Let him finish his answer.

21 THE WITNESS: The material information, yes,
22 that's correct.

23 BY MR. MIKHAIL:

24 Q And would you believe that same standard
25 would apply to you as a lobbyist?

1 A That's my personal standard. As whether I
2 would want to impose that personal standard on every
3 one else in the lobbying community, I don't know.

4 That's my personal standard.

5 Q That's your personal standard?

6 A Yes.

7 Q That's how you practice lobbying?

8 A And practice law, yeah.

9 Q And lobbying?

10 A Oh, sure.

11 Q Very quickly. Do you know what the tobacco
12 industry, what Philip Morris let's say Philip Morris'
13 position has been over the years in your representation
14 of them as to sting operations against convenience
15 stores or other establishments that sell tobacco to
16 minors, do you know what Philip Morris' position has
17 been?

18 A Over the years, no. Not over the years. I
19 do know that this year as the youth access legislation
20 moved through the process, someone, I don't remember
21 who it is, noticed that there was a provision in there
22 that would authorize sting operations.

23 I don't recall whether we are the ones that
24 brought it to the legislators' attention or someone
25 brought it to ours and we said that's fine with us,

1 sting operations should be allowed.

2 So I don't know historically what it was. As
3 far as this year we are comfortable with it.

4 Q What about the nature and type of sting
5 operations? In other words, do you recall and can you
6 tell me today whether or not Philip Morris had a
7 specific position on who could, who could conduct the
8 sting operation, and who couldn't, and that sort of
9 thing?

10 A No, other than at some point I saw some kind
11 of a model bill around. I don't even know where I saw
12 it. It had something on sting operations that someone
13 in the industry was going to volunteer up to the
14 legislature.

15 I would take it that was their suggestion for
16 a tin plate. But I recall, I mean I do not recall ever
17 hearing anything that says if it doesn't come out this
18 way, then we've got to change it or if it does have
19 these characteristics then it is bad or something like
20 that.

21 Do I know the characteristics of the sting
22 operation that Philip Morris likes or doesn't like?
23 No.

24 Q All right. Could you give me just a moment?

25 A Sure. Could we go off for a second?

1 (Off the record discussion.)

2 (Brief recess.)

3 BY MR. MIKHAIL:

4 Q Mr. French, one of the I guess cherished
5 qualities in a lobbyist, I'm sure you would agree with
6 that, is credibility with legislators; would you
7 agree?

8 A Yes.

9 Q You have to maintain that?

10 A Yes.

11 Q All right. If you learned that a position
12 that you have taken or information that you have
13 represented to a legislator, if you at a later time
14 learned that your client had given you or relayed to
15 you or withheld from you information that is contrary
16 and opposite to the information that you gave a
17 legislator and represented to him, would you feel an
18 obligation and a duty to approach the legislator or
19 legislature or committee chair, whoever it is, and take
20 a remedial measure to inform them that you had
21 unknowingly misrepresented something to them or given
22 them incorrect information?

23 MR. KELLER: Object to the form.

24 THE WITNESS: Assuming that my knowledge came
25 about in a non-privileged way, correct? Anyway,

1 that it was not subject to attorney-client
2 privilege on my part?

3 BY MR. MIKHAIL:

4 Q No, I'm assuming regardless of the manner in
5 which you learned that information.

6 A That's a tough one. It is a tough one in
7 terms of whether or not my ethical obligation as a
8 client to protect attorney-client privilege is less or
9 more significant than my commitment to the process in
10 terms of going back and correcting something I later
11 found out not to be true.

12 But let's say it was not in a privileged
13 environment. Let's say I found out from the newspaper
14 or testimony at trial or something like that. If I
15 found out in a non-privileged way, yes. If it was
16 substantive, if it was --

17 Q Material?

18 A If it was material and substantive, yes, I
19 would go back and correct it in a heartbeat.

20 Q The distinction you make is whether or not
21 you obtained it in a privileged or non-privileged way?

22 A Yes. If I obtain it in a privileged way,
23 then I guess I would probably have to go ask the Bar,
24 because I honestly don't know how you weigh those two,
25 you know, weigh those two constraints.

1 I really don't know what the right answer to
2 that is. I would do whatever they told me to do.

3 Q What if you came across documents, internal
4 company documents that were publicized in the press or
5 from sources other than Philip Morris that revealed
6 that Philip Morris internally for years, your client,
7 has known that tobacco use is a cause of lung cancer
8 and heart disease; and documents reveal that they have
9 known it for decades, and that they reached that
10 conclusion that it causes illness; and that there is no
11 question about that; and that certain number of people
12 die from it and certain number of people contract those
13 diseases from it; and that it is just as addictive as
14 cocaine and heroin; and that it is a drug that has a
15 physiological effect on the brain, and you have
16 represented to a legislator in conversations when the
17 health issues have come up it is just a risky behavior,
18 it is a risk.

19 Do you feel an obligation to somehow approach
20 that legislator and correct any misrepresentation you
21 have made unknowingly to them?

22 MR. KELLER: Object to the form.

23 MR. LOCKMAN: Form, lack of foundation.

24 MR. MIKHAIL: That's fine. Your objection is
25 noted.

1 MR. LOCKMAN: Yes.

2 THE WITNESS: If we are using causation in
3 the context that you used earlier, okay, where you
4 are talking about scientifically established
5 physiological causation and physiological
6 addiction, I think that there, again, if I learned
7 about it in a non-privileged environment, yes, I
8 would think there would be, I don't know if there
9 would be a duty on my part.

10 I think that I would want to go back just for
11 purposes of my own personal integrity and say I
12 didn't know this. If this, you know, if I was
13 convinced it was true, number one, I would have to
14 be convinced, I tend to give my clients the
15 benefit of the doubt. If I was convinced it was
16 true, then, you know, I think I would go back and
17 say I did not know about this at the time.

18 BY MR. MIKHAIL:

19 Q You would feel some sense of moral obligation
20 to do that?

21 A I think moral obligation, personal honor, if
22 I was convinced.

23 Q Okay.

24 A And again, Charles, there is a difference
25 between telling legislators cigarettes don't cause

1 cancer. I have never done that. Never will.

2 I told Philip Morris the day they hired me I
3 wouldn't do it. I don't know. I don't think you
4 know.

5 But because of that, I didn't mean that as
6 argumentatively as it sounded, I'm sorry. I think
7 because of that I always talk in terms of risk factors
8 and this, that, and the other, which I think is true.

9 Now, if I found out that they knew more than
10 that, and have actively concealed it, which I have yet
11 to have established on any basis --

12 Q But if you --

13 A Yes --

14 Q If you were convinced?

15 A If down the road it happened I would go back
16 and say, guys, I didn't know.

17 Q You said you mentioned you told Philip Morris
18 when they hired you that you wouldn't tell a legislator
19 that it doesn't cause -- did they ask you to tell them
20 that?

21 A Oh, absolutely not. They told me they would
22 never ask me to do that. I'm glad you asked me that.

23 Q How did the subject come up in your
24 discussions about what you would tell them about
25 causation?

1 A Well, because I told them at the time I have
2 a fairly unfortunate family history with different
3 kinds of cancer. You know, I'm a high risk cancer
4 person myself because of my father, my two
5 grandfathers, grandmother. I have got enough cancer in
6 the family to fill up a ward.

7 Q I'm sorry.

8 A It is a long time ago, but I've stayed fairly
9 abreast of those kind of things. You know, I don't
10 know if it causes cancer. Like I told you my feelings
11 on the thing.

12 I told them from the get-go though I was not
13 willing in the absence of scientific proof one way or
14 the other to stand up and say it doesn't cause cancer,
15 or am I willing to say that today.

16 Q You told them that?

17 A Absolutely.

18 Q And what was --

19 A Fine.

20 Q -- their response?

21 A They said great. We will never ask you to.

22 Q All right. When you acted as a lobbyist for
23 Philip Morris for all these years and you made a
24 distinction between privileged and non-privileged
25 information, are we talking in terms of attorney-client

1 privilege information or are we talking about a generic
2 contractual promise not to say anything?

3 A We are talking attorney-client. That's the
4 only kind of privilege I would invoke. I would just,
5 to cut to the chase on the thing, the instances of
6 kinds of things that I would consider to be privileged
7 in an attorney-client format really are extrinsic to
8 where you are going here today.

9 I don't want to lead you around. I will
10 represent to you that I'm not keeping anything from you
11 that you would want to know on the basis of privilege.

12 Q That's fine, Mr. French, but let me ask you
13 --

14 MR. LOCKMAN: Are we close to finishing?

15 MR. MIKHAIL: Yes, but he gave me information
16 that prompted a few more questions. Yes, we are,
17 Steve, in just a minute.

18 BY MR. MIKHAIL:

19 Q You've never acted for Philip Morris as their
20 attorney?

21 A Well, yes, actually I have.

22 Q Okay. But in lobbying for or against
23 legislation and in governmental affairs in Florida you
24 have acted from what I understand as their lobbyist and
25 not as their legal counsel?

1 A Right. And again I don't think you can
2 interchange the hat quite as easily as you apparently
3 do, but that's not the point. Yes, it has been as a
4 lobbyist.

5 Q As a lobbyist. So the attorney-client
6 privilege really didn't apply?

7 A Yeah, nor am I asserting it on anything
8 that's been subject to this --

9 Q Of this lawsuit?

10 A Other than what I mentioned.

11 Q This action. Okay, one final question.

12 Now, I understand you've gone before
13 committees and you've talked to legislators and you've
14 done lobbying in governmental affairs for Philip
15 Morris.

16 Have you ever acted in the capacity or have
17 you ever given public statements on behalf of Philip
18 Morris? In other words, do you speak to the press, do
19 you --

20 A Yes.

21 Q -- go to Rotary, do you speak to the media in
22 press conferences or anything on behalf of Philip
23 Morris?

24 A I am sorry for interrupting you. I have
25 spoken to the press or been quoted by the press.

1 regularly on behalf of Philip Morris on regular
2 issues.

3 Typically it is more a question of being
4 quoted as in conjunction with testimony as opposed to
5 responding to a particular inquiry. So, yes,
6 regularly.

7 Have I spoken before groups, associations,
8 this, that, and the other as a representative of Philip
9 Morris extrinsic to the legislature? I don't recall
10 having done so. I won't say I never have, but --

11 Q That's not normally in your job?

12 A No.

13 Q Unless my colleagues have any further
14 questions, Mr. French, it was a pleasure meeting you.
15 Sorry it is under these circumstances.

16 A I understand completely. You are just doing
17 your job and I'm trying to do mine.

18 MR. MIKHAIL: I'm done.

19 MR. LOCKMAN: I have one question.

20 MR. MIKHAIL: You are not allowed to ask
21 questions, Steve. No, go ahead.

22 CROSS EXAMINATION

23 BY MR. LOCKMAN:

24 Q Did Philip Morris support the 1997 minor
25 access act that you were testifying about earlier in

1 the form in which it was finally passed by the
2 legislature?

3 A Yes.

4 MR. LOCKMAN: Okay.

5 MR. MIKHAIL: Do you have any questions,
6 Dave?

7 MR. KELLER: No.

8 MR. MIKHAIL: Thank you.

9 (Whereupon, the taking of the deposition was
10 concluded at 12:50 p.m. Reading and signing were not
11 waived.)
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C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF LEON

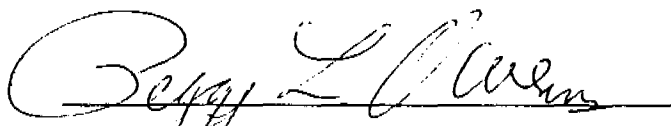
I, PEGGY L. OWENS, Registered Professional Reporter, at Tallahassee, Florida, do hereby certify as follows:

That I correctly reported in shorthand the foregoing proceedings at the time and place stated in the caption hereof:

That I later reduced my shorthand notes by computer-aided transcription, or under my supervision, and that the foregoing pages 3 through 120 both inclusive, contain a full, true, and correct transcript of the proceedings on said occasion:

That I am neither of kin, nor of counsel, to any parties involved, nor in any manner interested in the result thereof:

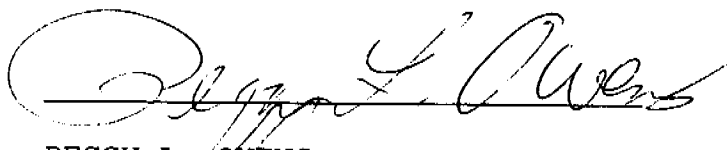
THIS 30th day of July, 1997.



PEGGY L. OWENS, RMR
Registered Professional Reporter

1
2
3 CERTIFICATE OF OATH

4 STATE OF FLORIDA

5
6 COUNTY OF LEON7 I, the undersigned authority, certify that
8 JOHN H. FRENCH personally appeared before me and was
9 duly sworn.10 WITNESS my hand and official seal this 30th
11 day of July, 1997.12
13 14 PEGGY L. OWENS
15 Notary Public - State of Florida
16 My Commission No. CC474691
17 Expires: 8-23-99PEGGY L. OWENS
MY COMMISSION # CC474691 EXPIRES
August 23, 1999
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Attn: Jerry Hudson Evans
P O Box 1137
Charleston, South Carolina 29402

DATE: 7/30/97
INVOICE NO: PO-5834

IN RE: State of Florida vs. American Tobacco

Depositions taken in Tallahassee 7/22/97.

French, 1 copy, 122 pages	\$152.50
Wright, 1 copy, 40 pages (<i>Previously mailed</i>)	50.00
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Thank you,
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(904) 222-6010

July 30, 1997

John H. French
1567 Cristobal Drive
Tallahassee, Florida 32303

IN RE: State of Florida vs. American Tobacco
Company

Dear Mr. French:

Please be advised that a copy of your
deposition taken in the above-styled cause has
been mailed to you for reading and signing.

I have enclosed a correction page. Please
enter your corrections on this page and have your
signature notarized.

You have 30 days from receipt of this to make
your corrections and return the correction page to
me.

If I can provide any further information,
please call.

Sincerely,



Peggy L. Owens
Registered Professional
Reporter

Copy: Mr. Fonvielle
Mr. Mikhail
Mr. Evans
Mr. Lockman
Mr. Keller